

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREGORY SIMMONS,

Defendant.

ORDER

13-cr-16-bbc-1

A hearing on the probation office's petition for judicial review of Gregory Simmons' supervised release was held on April 30, 2013, before U.S. District Judge Barbara B. Crabb. The government appeared by Assistant U.S. Attorney Laura A. Przybylinski Finn. Defendant was present in person and by counsel, David R. Karpe. Also present was U.S. Probation Officer Shawn P. Robinson.

From the record and the parties' stipulation, I make the following findings of fact.

FACTS

Defendant was sentenced in the Eastern District of Wisconsin on September 9, 2011, following his conviction for conspiracy to possess with intent to distribute 5 grams or more of cocaine base, cocaine and marijuana, in violation of 21 U.S.C. §§ 841(a)(1),

841(b)(1)(B), and 846. This offense is a Class B felony. Defendant was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 60 months, with a 48-month term of supervised release to follow. On June 14, 2012, the term of imprisonment was reduced to time served. The 48-month term of supervised release to follow imprisonment was affirmed. On January 16, 2013, the Honorable J.P. Stadtmueller ordered jurisdiction of the supervised release term transferred to the Western District of Wisconsin. The court further ordered the addition of Special Condition No. 9 requiring the defendant to spend up to 180 days in a residential reentry center, with admission upon the first available vacancy. On February 4, 2013, transfer of the jurisdiction of supervised release to the Western District of Wisconsin was completed.

Defendant began his term of supervised release on June 27, 2012. He violated Standard Condition No. 7, prohibiting him from possessing any narcotic or controlled substance except as prescribed by a physician, when he tested positive for marijuana on February 25, 2013, March 25, 2013 and March 31, 2013. Defendant violated Special Condition No. 9 requiring him to spend up to 180 days in a residential reentry center, when he was discharged as an unsuccessful completion case from Rock Valley Community Programs, Inc. on March 13, 2013.

Defendant argued that he did not actually violate Special Condition No. 9 because that condition required only that he spend up to 180 days in a residential reentry center and

did not require him to complete the term. This argument was rejected because the special condition required defendant to spend up to 180 days unless he was discharged early by joint agreement of the facility administration and the supervising probation officer. In any event, defendant's consumption of marijuana would justify revocation by itself.

Defendant's conduct falls into the category of a Grade C violation. Section 7B1.3(a)(2) of the advisory guidelines provides that the court has the discretion to revoke supervised release, extend it or modify the conditions of release.

CONCLUSIONS

Defendant's violations warrant revocation. Defendant's criminal history category is IV. With a Grade C violation, he has an advisory guideline term of imprisonment of 6 to 12 months. Under 18 U.S.C. § 3583(e)(3), the statutory maximum to which defendant can be sentenced upon revocation is 36 months because this offense is a Class B felony.

After reviewing the non-binding policy statements of Chapter 7 of the Sentencing Guidelines, I have selected a sentence within the advisory guideline range. The intent of this sentence is to hold defendant accountable for his violations and protect the community.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant Gregory

Simmons on September 9, 2011, and affirmed on June 14, 2012, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 10 months. A 24-month term of supervised release shall follow. All standard and special conditions of supervised release previously imposed shall remain in effect.

Defendant is neither a flight risk nor a danger to the community. Accordingly, execution of the sentence of imprisonment only is stayed until June 3, 2013, when defendant is to report between the hours of 10:00 a.m. and noon, to an institution to be designated by further court order. The present release conditions are continued until June 3, 2013.

Defendant is to be registered with local law enforcement agencies and the state attorney general before his release from confinement

Defendant does not have the financial means or earning capacity to pay the cost of his incarceration.

Entered this 1st day of May, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

U.S. District Judge