

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

-----  
UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

92-CR-0120-C-03

GRAHAM T. BOORSE,

Defendant.  
-----

A hearing on the revocation of Graham T. Boorse's supervised release was held in this case on February 25, 2003, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Laura Przybylinski Finn. Defendant was present in person and by counsel, Jay Heit. Also present was United States Probation Officer Kelley M. Gustaveson.

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

FACTS

Defendant was sentenced in the Western District of Wisconsin on April 5, 1993,

following his conviction for Distributing a Schedule II Controlled Substance, in violation of 21 U.S.C. § 841(a)(1), a Class B felony. He was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 27 months, with a six-year term of supervised release to follow. Further, he was ordered to pay restitution in the amount of \$1,362.50.

As a special condition of supervised release, defendant is required to abstain from any use of alcohol and from the use and sale of illegal drugs and from association with drug users and sellers and participate in a program of drug counseling and urine surveillance, as directed by the supervising U.S. probation officer.

Defendant began his term of supervised release on October 4, 1994. On July 9, 1996, I modified the conditions of his release by adding special condition #4, requiring defendant to reside at the Fahrman Center, Eau Claire, Wisconsin, for 90 days with work-release privileges. Defendant was successfully discharged from the Fahrman Center on December 13, 1996.

I modified defendant's conditions of supervised release again on November 14, 1997, by adding special condition #5, requiring him to reside at the Fahrman Center, Eau Claire, Wisconsin, for 120 days with work-release privileges. Defendant was successfully discharged from the Fahrman Center on April 6, 1998.

On September 9, 1998, I modified defendant's conditions another time by adding

special condition #6, requiring him to serve 90 days on home confinement with electronic monitoring. Defendant completed this home confinement on January 13, 1999.

On March 5, 1999, I revoked defendant's term of supervised release after positive drug tests for urine specimens collected on December 24, 1998, and January 29, 1998, showed that defendant had chosen to revert to the use of cocaine. I committed him to the custody of the Bureau of Prisons for a term of 10 months with a three-year term of supervised release to follow.

Defendant began his second term of supervised release on January 24, 2000. On July 17, 2000, I modified the conditions of his release to include special condition #4, requiring him to be placed on home confinement with electronic monitoring for 60 days.

On October 10, 2000, I modified the conditions of his release to include special condition #5, requiring him to serve an additional 30 days of home confinement with electronic monitoring.

On May 3, 2001, I modified the conditions of his release again to include special condition #6, requiring him to be placed on home confinement with electronic monitoring and the Sobriator for a period of 30 days.

On October 20, 2002, defendant was arrested by a Marathon City, Wisconsin, police officer and charged with Operating a Motor Vehicle While Intoxicated (Second Offense).

Defendant has stipulated to the facts underlying his violation behavior. His conduct falls into the category of Grade C violations, as defined by § 7B1.1(a)(3)(B) of the sentencing guidelines policy statement for violations of supervised release. In addressing such violations, the court has the discretion to revoke supervised release, extend it or modify the conditions of release.

### CONCLUSIONS

Defendant's violations require revocation. Accordingly, the three-year term of supervised release imposed on defendant on March 5, 1999, will be revoked.

Defendant's original criminal history category was II. A Grade C violation and a criminal history category II result in a guideline range of 4 to 10 months. The statutory maximum to which defendant can be sentenced upon revocation is 26 months, pursuant to 18 U.S.C. 3583(e)(3), which provides that a person whose term of supervised release is revoked may not be required to serve more than 3 years if the offense for which he was sentenced previously was a Class B felony. Defendant's supervised release was previously revoked and he was sentenced to a ten-month term of imprisonment.

After reviewing the non-binding policy statements in Chapter 7 of the Sentencing Guidelines, I have selected a sentence below that of the guideline range because defendant

will be required to serve a term of imprisonment for his new charges with Marathon County, Wisconsin. This sentence will be sufficient to impress upon the defendant the need to comply with the conditions of his supervised release and hold him accountable for his violation. Further, the sentence will allow defendant to continue his treatment while remaining in the community.

#### ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on March 5, 1999, is REVOKED and defendant is committed to the custody of the U.S. Marshal's Service for a term of one day. Defendant will receive credit for time served. A one-year term of supervised release shall follow. As special conditions of supervised release, defendant is to:

- (1) Abstain from any use of alcohol and from use and sale of illegal drugs and from association with drug users and sellers and participate in a program of counseling and drug testing, as directed by the supervising U.S. probation officer;
- (2) Participate in mental health counseling and treatment, which may include psychological testing, therapy and prescribed medication, as directed and approved by the supervising U.S. probation officer; and,

- (3) Register with local law enforcement authorities and the state attorney general, as directed by the supervising U.S. probation officer.

Entered this 25th day of February 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge