

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRANKLIN ROBINSON,

Defendant.

ORDER
93-CR-017-S-02

Petition for revocation of defendant's supervised release came on to be heard before the Court in the above entitled matter on March 2, 2006, the government having appeared by Stephen P. Sinnott, Acting United States Attorney for the Western District of Wisconsin, by Jeffrey Anderson, Assistant United States Attorney; the defendant in person and by T. Christopher Kelly. Honorable John C. Shabaz, District Judge, presided.

From the record and stipulation the court makes the following findings of fact.

Defendant was sentenced in the United States District Court for the Western District of Wisconsin on July 13, 1993 following his conviction for conspiracy to possess with intent to distribute cocaine base in violation of 21 U.S.C. § 846 & §841(a)(1), a Class A felony. He was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 126 months with a 60-month term of supervised release to follow and ordered to pay restitution in the amount of \$825.

As special conditions of supervised release the defendant was required to participate in substance abuse counseling and testing and pay his court-ordered restitution of \$825 in installments of \$50.00 per month. This was paid in full on March 4, 2004.

Defendant began his term of supervised release on June 7, 2002. On March 11, 2003 the court modified the conditions of his release by modifying special condition #1 requiring defendant to abstain from alcohol use and illegal drug use and participate in substance abuse counseling. The court modified conditions of his supervised release again on May 2, 2005 authorizing a 120 day placement at Rock Valley Community Programs. This was because the defendant had returned to abusing alcohol.

Defendant has stipulated to violating mandatory condition #1 by receiving convictions for operating a motor vehicle under the influence of alcohol, operating a motor vehicle with a prohibitive alcohol content and operating a motor vehicle without a valid license, in violation of Wisconsin State Statutes § 346.633(1) (A)&(B) and §343.05(3) (A) respectively on February 2, 2006. He also violated standard condition #11 by having a breath-alcohol content of .32 on a breathalyzer test on January 3, 2006. He further and repeatedly violated special condition #1 by having positive breathalyzer tests on November 21, 2005 and on January 6, 2006. He also failed to report for required drug testing on December 20, 2005, January 3 and 17, 2006 and on February 1, 2, 7 and 8, 2006. Lastly, defendant admitted to consuming alcohol on

February 13, 2006 and failing to report for counseling as required on January 30, 2006 and February 9, 2006. 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.

Defendant has had opportunities to address his alcohol addiction during his term of supervised release. His conditions were modified to include a 120-day placement at a federally contracted community corrections center to receive residential treatment in May 2005. Shortly after his release he began using alcohol and within two months was arrested for driving a motor vehicle while under the influence of alcohol. At the time of his arrest, defendant provided a positive breath test disclosing a breath alcohol content of .32, four times the legal intoxication level of .08. He did not respond to treatment. Instead he hid his use by not reporting for tests when required to do so and by not attending his required counseling sessions with his substance abuse counselor. Even though defendant has been involved in substance abuse treatment for almost three years, he has yet to overcome his alcohol addiction. The serious violations before the court indicate that defendant now poses a risk to the community when he consumes alcohol as evidenced by his driving under the influence of alcohol conviction received on February 2, 2006. The seriousness

of these violations committed by the defendant require revocation. Accordingly, the five-year term of supervised release imposed on the defendant on July 13, 1993 will be revoked.

Defendant's original criminal history category was III. A Grade C violation and a criminal history category III result in a guideline range of 5-11 months. The statutory maximum to which defendant can be sentenced upon revocation is 60 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 five years if the offense for which the defendant was sentenced previously was a Class A felony. The Court has selected a sentence at the top of the guideline range and will impose an 18-month term of supervised release to hold the defendant accountable for these violations, provide specific and general deterrence and to provide the defendant the opportunity to receive much needed community-based residential treatment.

ORDER

IT IS ORDERED that the period of supervised release imposed on the defendant is REVOKED and the defendant is committed to the custody of the Bureau of Prisons for a term of 11 months. An 18-month period of supervised release shall follow. The defendant is to be registered with local law enforcement agencies and the state attorney general before his release from confinement.

As special conditions of supervised release defendant is to reside in a federally contracted community sanctions center with

work release privileges during the first 180 days of his term of supervised release. He is to successfully complete the residential treatment program of the community sanctions center and must provide for his own medical expenses. He will be required to pay subsistence which is not to exceed 25% of his adjusted gross income unless a waiver is recommended by the community sanctions center director and approved by the Federal Bureau of Prisons. The court modifies special condition #1 imposed on July 13, 1993 and modified on March 11, 2003 to state: defendant is to abstain from the use of alcohol and illegal drugs and from association with drug users and sellers and participate in substance abuse treatment. Defendant shall submit to drug testing commencing within 15 days of release and 60 drug tests annually thereafter. The probation office may utilize the Administrative Office of the U.S. Courts' phased collection process.

All other conditions of supervised release previously imposed on July 13, 1993, modified on March 11, 2003 and again on May 2, 2005 are AFFIRMED.

The defendant does not have the financial means or earning capacity to pay the cost of incarceration and supervision.

The term of imprisonment is to commence immediately.

Entered this 2nd day of March, 2005.

BY THE COURT:

s/

JOHN C. SHABAZ
District Judge