

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

95-CR-63-C-10

LOYELL J. LINGOFELT,

Defendant.

A hearing on the revocation of Loyell J. Lingofelt's supervised release was held in this case on August 2, 2006, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney John Vaudreuil. Defendant was present in person and by counsel, Joanne Keane. Also present was United States Probation Officer Michael D. Harper .

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

FACTS

Defendant was sentenced in the Western District of Wisconsin on March 12, 1996, following his conviction for conspiracy to distribute methamphetamine, in violation of 21

U.S.C. §§ 846 and § 841. This crime is a Class A felony. He was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 90 months, with a 60-month term of supervised release to follow.

Defendant began his term of supervised release on November 6, 2001. On February 26, 2003, I modified defendant's conditions of supervised release by adding 50 hours of community service as a special condition of supervision, in response to defendant's arrest for driving while intoxicated.

Defendant stipulates that he has violated Standard Condition No. 1, which directs him not to commit another federal, state or local crime. On May 2, 2006, defendant was arrested by the Pinellas County Sheriff's Department, Largo, Florida, for driving while his license was suspended or revoked (Docket No. CTC061760ECLASP), and having an altered license tag (Docket No. CTC061761).

Defendant stipulates that he violated Standard Condition No. 3, which directs him to submit a truthful and complete written report within the first five days of each month. Defendant failed to submit his written monthly report forms for the months of February, March, April and May 2006.

Defendant stipulates that he violated Standard Condition No. 7, which requires that he notify the probation officer within 72 hours of any change in residence or employment. He absconded from supervision. Attempts by the probation officer to contact defendant in

March and April 2006 were unsuccessful.

Defendant stipulates that he violated Standard Condition No. 8 and Special Condition No. 2, which prohibit his use of illegal drugs. On July 11, 2006, defendant submitted a urine specimen that tested positive for cocaine and he admitted having used cocaine within the previous three days.

Defendant's conduct falls into the categories of Grade B and C violations, as defined by §7B1.1(a)(3) of the sentencing guidelines policy statement for violations of supervised release. In addressing Grade B violations, the guidelines require that supervised release be revoked.

CONCLUSIONS

Defendant's violations warrant revocation. Defendant has previously been granted an opportunity to remain in the community despite a new arrest for driving while intoxicated. His instant violations include a felony charge of driving while his license is suspended, failing to submit monthly supervision reports, absconding from supervision, and using cocaine. Accordingly, the five-year term of supervised release imposed on defendant on March 12, 1996, will be revoked.

Defendant's original criminal history category was V. The highest grade of violation is Grade B. A Grade B violation coupled with a criminal history category of V results in a guideline term of imprisonment of 18 to 24 months. The statutory maximum to which

defendant can be sentenced upon revocation is five years, 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 he was sentenced previously was a Class A felony.

After reviewing the non-binding policy statements of Chapter 7 of the Sentencing Guidelines, I have selected a sentence within the guideline range. The intent of this sentence is to reflect the seriousness of defendant's criminal acts and disregard for supervision, to provide an alcohol and drug-free structured setting and to protect the community.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on March 12, 1996, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 20 months. No term of supervised release shall follow the term of imprisonment.

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

incarceration.

Entered this 2d day of August, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

Chief District Judge