

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRANK CURRY,

Defendant.

ORDER

96-CR-04-C-02

A hearing on the revocation of Frank Curry's supervised release was held in this case on June 7, 2007, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney David J. Reinhard. Defendant was present in person and by counsel, Rick Coad. Also present was Senior United States Probation Officer Michael D. Harper.

From the record, I make the following findings of fact.

FACTS

Defendant was sentenced in the Western District of Wisconsin on August 23, 1996, following his conviction for conspiracy to possess with intent to distribute and distribute cocaine base in violation of 21 U.S.C. § 846, which is a Class A felony. He was committed

to the custody of the Bureau of Prisons to serve a term of imprisonment of 144 months with a five-year term of supervised release to follow. As a mandatory condition of supervised release, defendant was prohibited from possessing illegal controlled substances.

Defendant began his term of supervised release on September 29, 2006. On February 9, 2007, I ordered the modification of the conditions of his supervised release to include a special condition prohibiting defendant from frequenting bars and a special condition requiring his participation in home detention, including electronic monitoring for up to 180 days.

On March 28, 2007, a search conducted at defendant's residence uncovered marijuana hidden in an electrical panel, and an additional five bags of marijuana hidden in the yard outside the residence. On March 30, 2007, the probation office petitioned for a warrant or summons in response to the discovery that defendant had possessed marijuana in his residence.

On May 15, 2007, defendant entered a plea of guilty in Eau Claire County, Wisconsin, Circuit Court to a charge of possession of THC.

Defendant has stipulated that he violated the mandatory condition prohibiting him from possessing illegal controlled substances. On March 28, 2007, he was arrested in Eau Claire, Wisconsin. On May 15, 2007, he was convicted of that crime.

Defendant's conduct (possession of a controlled substance) falls into the category of

Grade B violations, as defined by §7B1.1(a)(2) of the sentencing guidelines policy statement for violations of supervised release. In addressing such violations, §7B1.3(a)(1) suggests that the court should revoke supervised release.

CONCLUSIONS

Defendant's violation requires revocation. Accordingly, the five-year term of supervised release imposed on defendant on August 23, 1996, will be revoked.

Defendant's original criminal history category was IV. With a Grade B violation and a criminal history category of IV, he has a guideline range of 12 to 18 months' imprisonment. 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 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 above the guideline range. The intent of this sentence is to impress upon defendant the seriousness of his continuing criminal activity, insure the safety of the community at large and afford him an opportunity to participate in the 500-hour residential substance abuse treatment program offered by the Bureau of Prisons to address his abuse of alcohol.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on August 23, 1996, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 30 months. No term of supervised release shall follow the sentence of imprisonment. Defendant does not have the financial means or earning capacity to pay the cost of incarceration. Execution of this sentence will begin immediately.

Entered this 7th day of June 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

Chief District Judge