

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

PATRICK HENDERSON,

Defendant.

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ORDER

97-CR-0074-C-03

Defendant Patrick Henderson has written to the court to ask for a reformation of the judgment and commitment imposed on him on April 16, 1998. He wants his federal sentence adjusted to provide that his federal sentence run concurrently with the state court sentence he completed in 1999, so that he will receive credit on his federal sentence for the eighteen months he served in state custody after he was sentenced in this court. The request will be construed as a motion and denied.

It appears that when defendant was sentenced in this court, he was serving a state sentence that carried a term of four years' probation. The state court revoked his probation on April 20, 1998, after he had been sentenced in this court. In doing so, the state court stated that its intent was to have the state sentence run concurrently with the federal

sentence. Despite the state court's statement, the state of Wisconsin kept defendant in state custody until December 8, 1999, before paroling him to federal custody. The Bureau of Prisons will not give defendant credit for the time he spent in state custody unless his federal sentence is revised to show that it was the intent of this court to give defendant a sentence that was to run concurrently with his state sentence.

I have some question whether I have the authority to revise a judgment in any respect in the absence of a motion from the government or a reversal of the sentence by the court of appeals. It is not necessary to decide that question because I would not be inclined to grant defendant's request for a reduction in his sentence even if I were convinced I had the authority to do so.

Had defendant been sentenced in federal court after his state probationary term was revoked, the Sentencing Guidelines would have required that his federal sentence run consecutively to his state sentence. U.S.S.G. § 5G1.3(a) says that the court *shall* impose a consecutive sentence to any undischarged term of state imprisonment if the defendant committed the federal offense while serving a term of imprisonment, including work release. When defendant committed the federal offense, he was serving a state sentence with work release. (Distributing crack cocaine was probably not the work the state court had in mind when it gave him work release.)

Defendant's federal sentence conforms to the requirements of the guidelines. The

length of the resulting sentence is the consequence of defendant's unfortunate decision to distribute crack cocaine while he was serving a sentence with work release, not because of any sentencing error in this court. Therefore, defendant's request for a modification of the sentence is DENIED.

Entered this 2nd day of April, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge