

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

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UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

98-CR-47-C-03

ANDREW A. BIRD,

Defendant.  
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A hearing on the revocation of Andrew A. Bird's supervised release was held in this case on May 27, 2005, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney David Reinhard. Defendant was present in person and by counsel, Kelly Welsh. Also present was United States Probation Officer Helen Healy Raatz.

From the parties' stipulation at the hearing, I make the following findings of fact.

FACTS

Defendant was sentenced in the Western District of Wisconsin on October 9, 1998,

following his conviction for the Class C felony of bank robbery, in violation of 18 U.S.C. § 2113(a). Defendant was committed to the Bureau of Prisons to serve a term of imprisonment of 63 months, with a three-year term of supervised release to follow.

As a mandatory condition of supervised release, defendant was prohibited from committing another federal, state or local crime. As a standard condition, defendant was required to report to the probation officer as directed and to submit a truthful and complete written report. As a special condition, defendant was required to abstain from the use of alcohol.

Defendant began his term of supervised release on November 8, 2002. On March 17, 2003, the probation office filed a violation report after defendant provided a urine specimen on March 6, 2003, that tested positive for THC metabolite. No action was taken at that time because defendant was referred for a substance abuse assessment, counseling and continued urinalysis.

On January 5, 2004, I modified the conditions of defendant's release by adding special condition #4, requiring him to reside at the Fahrman Center, Eau Claire, Wisconsin, for a period of no fewer than 90 days and no more than 120 days to complete a substance abuse treatment program. On March 1, 2004, defendant was discharged from the Fahrman Center for failing to follow rules. In response to the discharge, I modified the conditions of defendant's release in an order entered April 26, 2004, by adding the following special

conditions: special condition #5, which required defendant to successfully participate in a 30-day inpatient substance abuse treatment program, specifically the New Day Treatment Program in L'Anse, Michigan; special condition #6, requiring defendant to reside in the Transitional Living Program Apartments of the Ho-Chunk Nation until such time as he was successfully discharged from the program and could support himself and his family with gainful employment; special condition #7, requiring defendant to participate in a program of home confinement with electronic monitoring for a term of 90 days; and special condition #8, requiring defendant to obtain a valid driver's license for the State of Wisconsin as soon as he was legally eligible.

Defendant has stipulated that he violated the mandatory condition that prohibited him from committing another federal, state or local crime and special condition #2, which required him to abstain from the use of alcohol on November 13, 2004, when he was arrested by Brockway, Wisconsin police officers and charged with vehicle operator fleeing an officer; operating while under the influence (1st); operating with BAC .10 or more (1st); operating without valid license (3rd within 3 years); failing to stop at stop sign (2 counts); operating left of center line; and violating the mandatory seatbelts requirement.

Defendant stipulated also that he violated special condition #6, which required him to reside at the Transitional Living Apartments of the Ho-Chunk Nation. On January 4, 2005, Sharon Greendeer, Ho-Chunk Nation House of Wellness program counselor, advised

the supervising probation officer that defendant had never participated in any counseling sessions or other programs available to him while residing at the Transitional Living Apartments.

In addition, defendant stipulated that he violated standard condition #2, which required him to report to the probation officer as directed and submit a truthful and complete written report within the first five days of each month. On January 4, 2005, defendant was instructed to call his probation officer every Monday morning to report his progress. Defendant called the probation office on January 17 and 20, 2005. He made no other contact with his probation officer. Defendant failed to submit his written monthly reports for the months of January, February and March 2005.

Defendant has violated standard condition #2, special conditions #2 and #6 and the mandatory condition prohibiting him from committing another crime. His conduct falls into the category of Grade C violations, as defined by § 7B1.1(a)(3) 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 has a history of substance abuse, continued illegal conduct and unsuccessful treatment attempts. While on supervision defendant has been given several

opportunities to receive inpatient and outpatient treatment. Despite these opportunities, he has failed to maintain gainful employment, obtain a valid driver's license or complete his requirements for a GED. The only proper response is to revoke the three-year term of supervised release imposed on defendant on October 9, 1998.

Defendant's original criminal history category was II. A Grade C violation and a criminal history category of II result in a guideline range of 4 to 10 months. The statutory maximum to which defendant can be sentenced upon revocation is 24 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 two years if the offense for which he was sentenced previously was a Class C felony.

After reviewing the non-binding policy statements of Chapter 7 of the sentencing guidelines, I have selected a sentence above the guideline range. Such a sentence is necessary because defendant does not appreciate the seriousness of his substance abuse problem. He did not take advantage of the treatment opportunities available to him while on supervised release and he committed new law violations that were impulsive and dangerous. This sentence is intended to impress upon defendant the seriousness of his substance abuse problem, to afford him an opportunity to receive treatment in a controlled setting and to protect the community.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on October 9, 1998, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 24 months. It is recommended that the Bureau of Prisons provide defendant the opportunity to participate in the 500-hour substance abuse treatment program and in GED classes. No term of supervised release will follow the sentence of imprisonment. Defendant is to be registered with local law enforcement agencies and the state attorney general before his release from confinement.

Defendant does not have the financial means or earning capacity to pay the cost of his incarceration. Execution of this sentence will begin immediately.

Entered this 27th day of May 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

Chief District Judge