

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

99-CR-127-C-01

ROBERT JAMES BROWN,

Defendant.

A hearing on the revocation of Robert James Brown's supervised release was held in this case on February 1, 2006, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Laura Przybylinski Finn. Defendant was present in person and by counsel, Sandra Glowdowski. Also present was Senior United States Probation Officer Kelley M. Gustaveson.

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 May 5, 2000, following his conviction for conspiracy to distribute, and possession with intent to distribute cocaine in violation of 21 U.S.C. § 841(a)(1). This offense is a Class B felony. He was

committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 97 months with a five-year term of supervised release to follow. On June 8, 2001, the court reduced the sentence to 78 months in response to the government's motion for a reduction of sentence, filed pursuant to Fed. R. Crim. P. 35(b).

As a standard condition, defendant was prohibited from using a controlled substance. As special conditions, defendant was required to abstain from the use of alcohol, participate in a substance abuse treatment program at the Fahrman Center in Eau Claire and submit urine specimens when requested.

Defendant began his term of supervised release on July 14, 2004. On August 18, 2005, a violation report was submitted after defendant admitted he consumed alcohol on January 16, 2005 and also provided a urine specimen on June 14, 2005 that tested positive for cocaine metabolite. On August 23, 2005, I signed the probation form 12C and ordered a summons be prepared for judicial review. On October 25, 2005, I signed a Probation Form 12B cancelling the judicial review and modifying the conditions of supervised release to include a special condition requiring defendant to reside at the Fahrman Center, Eau Claire, Wisconsin, for a period of not less than 60 days and not more than 120 days to complete a substance abuse treatment program.

Defendant has stipulated that he failed to report to the Fahrman Center on November 14, 2005. His failure to report was a violation of special condition #5, which

required him to reside at the Fahrman Center for not less than 60 days or more than 120 days for substance abuse treatment.

Defendant's 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 serious prior history of substance abuse. During the first 18 months of his term of supervised release he relapsed and began using alcohol and illegal drugs. He was offered residential substance abuse treatment and willfully failed to report to the program. His refusal to report necessitates revocation of the five-year term of supervised release imposed on defendant on May 5, 2000.

Defendant's original criminal history category was IV. A Grade C violation and a criminal history category of IV result in a guideline range of 6 to 12 months. The statutory maximum to which defendant can be sentenced upon revocation is 36 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 three years if the offense for which he was sentenced previously was a Class B felony.

After reviewing the non-binding policy statements of Chapter 7 of the sentencing guidelines, I have selected a sentence within the guideline range. Defendant successfully completed the Bureau of Prisons' 500-hour substance abuse treatment program while incarcerated. He accepted the principles of aftercare and recovery. Defendant admits that he relapsed while on supervised release and admits that he needs substance abuse treatment. The intent of this sentence is to impress upon defendant the seriousness of his substance abuse problem and to afford him an opportunity to receive treatment in a controlled setting.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on May 5, 2000, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of two months. A three-year term of supervised release shall follow the sentence of imprisonment. All previous conditions of supervised release are reimposed and the following special conditions are ordered:

#6: Reside at a federally-approved community corrections center, namely the Fahrman Center, Eau Claire, Wisconsin, for a period of not less than 120 days with work release privileges for up to ten hours a day, six days a week. Work release privileges will begin after defendant completes the appropriate substance abuse treatment programming at the facility. Defendant may leave the facility to attend medical and mental health

treatment appointments. Defendant will be required to pay 25 percent of his gross pay for the daily costs as well as pay all medical expenses.

#7: 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 beginning 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.

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 incarceration. Execution of this sentence will begin immediately.

Entered this 1st day of February 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

Chief District Judge