

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAY D. OBERG,

Defendant.

ORDER

00-CR-094-S-01

Petition for revocation of defendant's supervised release came on to be heard before the Court in the above entitled matter on April 26, 2007, the government having appeared by Erik C. Peterson, United States Attorney for the Western District of Wisconsin, by Rita Rumbelow, Assistant United States Attorney; the defendant in person and by Joanne M. Keanne. Honorable John C. Shabaz, District Judge, presided.

From the record and defendant's stipulation, the Court makes the following findings of fact

On March 22, 2001 defendant was sentenced in the United States District Court for the Western District of Wisconsin following his conviction for possession with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1), a Class C felony. He was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 64 months with a three-year term of supervised release to follow.

As a special condition of supervised release, defendant was ordered to abstain from the use of alcohol, the use of illegal drugs, associations with drugs users and sellers and participate in substance abuse treatment and additional drug tests as directed by the supervising United States Probation Officer.

On October 7, 2005 defendant began his term of supervised release. He violated the terms of his supervised release by associating with known drugs users, driving without a valid driver's license and failing to report police contact. As a result of these violations, the Court modified defendant's conditions of supervised release by ordering him to reside at the Fahrman Center for a 90- to 120-day placement. Defendant has stipulated that he violated the special condition of supervised release which directs him to abstain from the use of illegal drugs and participate in drug testing as directed. On March 2, 2007 defendant used methamphetamine. On March 6, 2007 defendant provided a urine sample for testing that was not his own.

Defendant's conduct falls into the category of a Grade C violation 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 the term of supervised release or modify the conditions of release.

Defendant's violations warrant revocation. Accordingly, the three-year term of supervised release imposed on the defendant on March 22, 2001 will be revoked.

Defendant's criminal history category is III. A Grade C violation coupled with a criminal history category of III results in an advisory guideline term of imprisonment of 5 to 11 months. The statutory maximum to which defendant can be sentenced upon revocation is two 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 two years if the offense for which the defendant was sentenced previously was a Class C felony.

After reviewing the non-binding policy statements of Chapter 7 of the Sentencing Guidelines, the Court determines that a sentence in the middle of the advisory guideline range, 8 months, is reasonable and necessary. The intent of this sentence is to deter the defendant from future criminal acts, provide a drug-free structured setting and protect the community.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of eight months with one year of supervised release to follow. All conditions of supervised release originally imposed will remain in effect. 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.

Defendant is neither a flight risk nor a danger to the community. Accordingly, execution of the sentence of imprisonment only is stayed until May 24, 2007 between the hours of noon and 2:00 p.m. when defendant is to report to an institution to be designated by further court order. Where he is unable to do so he shall report at said date and time to the United States Marshal's office at 120 North Henry, Madison, WI. The present release conditions are continued until May 24, 2007 to include a requirement that defendant be tested for illegal drug use once a week for each week the stay is in effect.

Entered this 26th day of April, 2007.

BY THE COURT:

s/

JOHN C. SHABAZ
District Judge