

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

00-CR-093-C-01

BARBARA J. POLLACK

Defendant.

A hearing on the revocation of Barbara J. Pollack's supervised release was held in this case on June 14, 2007, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Robert Anderson. Defendant was present in person and by counsel, Mark Maciolek. Also present was United States Probation Officer Michael Harper.

From defendant's stipulation, I make the following findings of fact.

FACTS

Defendant was sentenced in the Western District of Wisconsin on May 5, 2001, following her conviction for bank fraud, in violation of 18 U.S.C. § 1344, a Class B felony, and identity theft, in violation of 18 U.S.C. § 1028(a)(7), a Class C felony. She was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 16

months on each count with the terms to run concurrently and a 60-month term of supervised release to follow on the bank fraud conviction and a 36-month term of supervised release to follow on the identity theft conviction.

Defendant began her initial term of supervised release on August 5, 2002.

Defendant has stipulated that she violated standard condition no. 3, which requires her to answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer. On October 10, 2002, defendant agreed to a minimal payment plan of \$50 a month on her restitution obligation. She failed to make payments in November 2002 and December 2002.

Thereafter, defendant and her probation office engaged in a review of defendant's financial situation and determined that she could pay \$300 a month toward her restitution obligation. However, defendant made only three payments in 2003, totaling just \$350. In October 2003, she told the U.S. Probation Office that she had made a \$250 payment toward her restitution but no record of this payment exists.

On January 22, 2004, defendant agreed to apply her entire 2003 tax refund to her restitution, but failed to do so. For the year 2004, she made a total of three restitution payments totaling just \$1,250. On October 10, 2004, and on March 3, 2005, the supervising probation officer directed defendant to mail restitution payments directly to the Clerk of Court for the Western District of Wisconsin. Defendant failed to submit any payments. In 2005, defendant made no restitution payments. Since March 2006, defendant has paid restitution as directed on just two occasions.

Defendant's conduct falls into the category of a Grade C violation. Upon finding a Grade C violation, I have the discretion to revoke supervised release, extend the term of supervised release or modify the conditions of release, as defined by §7B1.3(a)(1) of the sentencing guidelines policy statement for violations of supervised release.

CONCLUSIONS

Defendant's violations warrant revocation. Defendant had the ability to make restitution in a manner consistent with the U.S. Probation Officer's directives and failed to do so. Accordingly, the five-year term of supervised release imposed on defendant on May 5, 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 a guideline term of imprisonment of 5 to 11 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 a defendant 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 below the guideline range. The intent of this sentence is to deter defendant from future criminal acts and to provide an appropriate consequence for her violations of supervision.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on May 5, 2001, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of four months. A 24-month term of supervised release shall follow. All standard and special conditions of supervised release previously imposed shall remain in effect. Because defendant has seasonal employment that will last until November and because she is neither a flight risk nor a danger to the community, execution of the sentence of imprisonment is stayed until noon on November 4, 2007, when defendant is to report to an institution to be designated by further court order. The conditions of her supervised release shall remain in effect until noon on November 4, 2007.

Defendant does not have the financial means or earning capacity to pay the cost of incarceration.

Entered this 22d day of June, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
Chief District Judge