

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM B. FELTS,

Defendant.

ORDER

00-CR-80-C-02

A hearing on the revocation of William B. Felts's supervised release was held in this case on February 7, 2003, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorneys John Vaudreuil and Heidi Luehring. Defendant was present in person and by counsel, Leslie Dubois. Also present was United States Probation Officer Leslyn Spinelli.

From the record and testimony provided, I make the following findings of fact.

FACTS

Defendant was sentenced in the Western District of Wisconsin on June 4, 2001, following his conviction for mail fraud, in violation of 18 U.S.C. § 1341, a Class D felony. He was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 15 months, with a 36-month term of supervised release to follow. Further, he was ordered to pay restitution in the amount of \$881,644.80. Defendant's restitution obligation is joint and several with Larry R. Curry.

As a general condition of supervised release, defendant is required to pay any restitution that remains unpaid at the commencement of the term of supervised release.

Defendant began his term of supervised release on August 2, 2002, in the Central District of California. At the time of sentencing, defendant had assets he could have sold to pay restitution, including a 1999 Cadillac Escalade and property at 1257 Riverfront, Bullhead City, Arizona. Neither asset has a lien nor debt associated with it. The United States demanded repeatedly that defendant sell the Bullhead City, Arizona property as well as the 1999 Cadillac and use the proceeds to satisfy his restitution obligation. To date, defendant has not complied with the demand.

Defendant has violated the general condition of supervised release that requires him to pay any restitution that remains unpaid at the beginning of his term of supervised release.

Defendant's conduct falls into the category of a Grade C violation, as defined by § 7B1.1(a)(3)(B) 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's violation requires revocation. Defendant has failed to pay restitution as ordered despite having the assets with which to do so and having been granted an extension of time for payment by the government. According to 18 U.S.C. § 3572(i), defendant is in default in paying restitution because he is more than 90 days delinquent in selling the assets identified above. Accordingly, I am revoking the three-year term of supervised release imposed on defendant on June 4, 2001, pursuant to 18 U.S.C. § 3613A. In determining what action to take, I have considered defendant's employment, his financial resources and his unwillingness to comply with the restitution order.

Defendant's original criminal history category was I. A Grade C violation and a criminal history category I produce a guideline range of 3-9 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 D felony.

After reviewing the non-binding policy statements in Chapter 7 of the Sentencing Guidelines, I have selected a sentence at the bottom of the guideline range. This sentence will be sufficient to impress upon defendant the need to comply with the conditions of his supervised release and to make a good faith effort in paying restitution and it will hold him accountable for his violation.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on June 4, 2001, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of three months. A 24-month term of supervised release is to follow the term of imprisonment. All conditions previously imposed will remain in effect. The restitution obligation of \$881,644.80 remains joint and several with Larry R. Curry. Defendant is to register with local law enforcement agencies and the state attorney general before his release from confinement.

Defendant is neither a flight risk nor a danger to the community. Therefore, the imposition of imprisonment is suspended until March 10, 2003, when defendant is to

surrender to an institution to be designated by the Bureau of Prisons between the hours of noon and 2:00 p.m.

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

Entered this 10th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge