

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

RONALD A. JOHNSON,

Defendant.

ORDER

01-CR-95-C-01

A hearing on the revocation of Ronald A. Johnson's supervised release was held in this case on August 22, 2006, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Timothy M. O'Shea. Defendant was present in person and by counsel, Michele Tjader. Also present was United States Probation Officer Michael D. Harper .

From the record and the parties' stipulation, I make the following findings of fact.

FACTS

Defendant was sentenced in the Western District of Wisconsin on February 15, 2002, following his conviction for unlawful use of access devices, in violation of 18 U.S.C.

§ 1029(a)(2). This crime is a Class C felony. Defendant was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 18 months, with a 36-month term of supervised release to follow.

Defendant began his term of supervised release on January 18, 2005. Defendant stipulates that his use of heroin violated Special Condition No. 1, which directs him to abstain from illegal drug use and from associations with drug users and sellers and participate in substance abuse treatment and testing.

Defendant's conduct falls into the category of a Grade B violation, as defined by §7B1.1(a)(3) of the sentencing guidelines policy statement for violations of supervised release. In addressing Grade B violations, the guidelines require revocation of supervised release.

CONCLUSIONS

Defendant has previously been granted an opportunity to remain in the community despite a return to illegal drug use. Despite this opportunity, defendant used heroin while in intensive drug treatment. Such a violation of supervised release requires revocation. Accordingly, the three-year term of supervised release imposed on defendant on February 15, 2002, will be revoked.

Defendant's original criminal history category was II. The highest grade of violation

is Grade B. A Grade B violation coupled with a criminal history category of II results in an advisory guideline term of imprisonment of 6 to 12 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 defendant was sentenced previously was a Class C felony.

After reviewing the non-binding policy statements of Chapter 7 of the Sentencing Guidelines, I am sentencing defendant within the advisory guidelines. Although defendant would benefit from participating in a drug treatment program in an institution, a sentence long enough to enable him to do so is disproportionate both to his original criminal conduct and his violation of supervised release. Moreover, I am not persuaded that defendant would take advantage of any institutional drug treatment program.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on February 15, 2002, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 10 months, with a 14-month term of supervised release to follow the term of imprisonment. All previously imposed conditions of supervised release will remain in effect.

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

Entered this 22d day of August, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

Chief District Judge