

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

01-CR-98-C-02

FREDERICK L. GRAHAM,

Defendant.

A hearing on the revocation of Frederick L. Graham's supervised release was held in this case on May 26, 2004, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney John Vaudreuil. Defendant was present in person and by counsel, Jonas Bednarek. Also present was Senior United States Probation Officer William T. Badger, Jr.

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

FACTS

Defendant was sentenced in the Western District of Wisconsin on November 27, 2001, following his conviction for aiding and abetting an escape, in violation of 18 U.S.C.

§ 751(a) and 2. This crime is a Class D felony. Defendant was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 24 months, with a three-year term of supervised release to follow.

On December 15, 2003, I modified defendant's supervised release by requiring him to reside at Rock Valley Community Programs for up to 120 days. This modification was necessary to assist defendant's re-entry into the community.

Defendant began his three-year term of supervised release on March 8, 2004. On March 23, 2004, defendant was terminated from Rock Valley Community Programs for failing to follow program rules. The probation office filed a petition for judicial review; however, that petition was later withdrawn and defendant was ordered to return to Rock Valley on April 13, 2004, to fulfill special condition #5, which required him to complete up to 120 days at Rock Valley.

Defendant has stipulated to violating special condition #4, which required him to abstain from illegal drug use by using an illegal drug. On May 5, 2004, defendant provided a urine sample to Rock Valley staff that tested positive for THC. In addition, defendant has stipulated that he violated special condition #5, when he was terminated again from Rock Valley Community Programs for failing to comply with program rules. On May 12, 2004, defendant absconded from supervision.

Defendant's conduct falls into the category of Grade C violations, as defined by §

7B1.1(a)(3)(B) of the sentencing guidelines policy statement for violations of supervised release. Upon a finding of a Grade C violation, the court may revoke supervised release; or extend the term of supervised release; or modify the conditions of supervision.

CONCLUSIONS

Defendant's violations require revocation. Defendant was placed at Rock Valley to assist him in returning to the community. He was to find employment, save money for a place to live, work on his GED, and participate in substance abuse treatment. Defendant failed to obtain a job and complete his GED; he engaged in illegal drug use and he absconded from the facility. This is evidence that defendant is not taking his supervised release seriously. Accordingly, the three-year term of supervised release imposed on defendant on November 27, 2001, will be revoked.

Defendant's original criminal history category was IV. A Grade C violation and a criminal history category IV result in a guideline range of 6 to 12 months. The statutory maximum to which defendant can be sentenced upon revocation of supervised release 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 defendant 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 top of the guideline range. This sentence is

necessary to hold defendant accountable for his behavior, deter others from similar conduct, protect the community and impress upon defendant the seriousness of complying with his court-ordered conditions.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on November 27, 2001, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 12 months. A two-year term of supervised release shall follow. All special conditions previously imposed remain in effect, including special condition #5 requiring defendant to reside at Rock Valley Community Programs for up to 120 days.

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

Entered this 26th day of May, 2004.

BY THE COURT:

BARBARA B. CRABB
Chief District Judge