

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELAINE M. JUSTMANN,

Defendant.

ORDER

02-CR-31-C-01

A hearing on the revocation of Elaine M. Justmann's supervised release was held in this case on December 7, 2006, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Laura Przybylinski Finn. Defendant was present in person and by counsel Mark Maciolek. Also present was United States Probation Officer Helen Healy Raatz.

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 June 17, 2002, following her conviction for bank embezzlement, in violation of 18 U.S.C. § 656, which is

a Class B felony. She was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 4 months, with a 48-month term of supervised release to follow.

Defendant began her term of supervised release on November 6, 2002. On July 13, 2004, I modified supervision conditions by adding special condition #6, requiring defendant to abstain from any use of alcohol. On November 27, 2006, I modified the conditions of her release again by adding special condition #7, requiring defendant to install an interlock device on any vehicle she operates.

Defendant has stipulated to violating special condition #6 by using alcohol in early April 2006, on May 20, 2006, and on October 9, 2006. On October 9, 2006, her alcohol breath test registered at .14%. Her 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. In addressing such violations, the court has the discretion to revoke supervised release, extend it or modify the conditions of release.

CONCLUSIONS

Defendant's violations require revocation. Defendant has continued to use alcohol and has been unable to correct other problems in her life. Although she admits she has an alcohol addiction, she has been unable to abstain from alcohol. Instead, she has consumed alcohol and has driven a vehicle while under the influence of alcohol. Defendant's inability

to abstain from alcohol leads me to conclude that defendant cannot control her use of alcohol without community oversight. Defendant had less than one month supervision remaining when she last violated conditions. She requires continued monitoring. Accordingly, the 4-year term of supervised release imposed on defendant on June 17, 2002, will be revoked and a new term of supervised release will be imposed.

Defendant's original criminal history category was I. A Grade C violation and a criminal history category I result in a guideline range of 3-9 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 she was sentenced previously was a Class B felony.

I have selected a sentence below the bottom of the guideline range because defendant does not require punishment and she remains amenable to substance abuse treatment and testing. Revocation of supervised release will hold defendant accountable for the serious violations she committed and placement on supervised release will provide protection of the community.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant is REVOKED. Because confinement at a regular Bureau of Prisons facility is not necessary to

provide just punishment or other correctional treatment in the most effective manner, and a treatment bed is not available at Arc on Dayton until March 2007, it is ordered that defendant is to serve a term of 1 day, with credit for time served today. An 18-month term of supervised release is to follow the term of imprisonment and commences immediately.

As special conditions of supervised release, defendant shall

1. Abstain from any use of alcohol and participate in testing and an alcohol treatment program, which may include prescription Anabuse, as directed by the supervising U.S. Probation Officer;
2. Have installed and maintain an ignition interlock device approved by the probation office in any vehicle owned or operated by the offender for personal use. Defendant shall be responsible for the total cost of the installation and maintenance of the ignition interlock device;
3. Participate in outpatient mental health counseling as directed by the supervising probation officer;
4. Provide the probation officer with any and all requested financial information; and
5. Register with local law enforcement agencies and the state attorney general as directed by the supervising probation officer.

Defendant has the financial means to pay the cost of appointed counsel.

Entered this 7th day of December, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB
Chief District Judge