

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

02-CR-138-C

BETH M. MITTELSTADT,

Defendant.

A hearing on the revocation of Beth M. Mittelstadt's supervised release was held on August 16, 2005, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Paul W. Connell. Defendant was present in person and by counsel, Reed Cornia.

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

FACTS

Defendant was sentenced in the Southern District of Florida on January 6, 1999, following her conviction for importing cocaine into the United States in violation of

21 U.S.C. § 952(a). This crime is classified as a Class B felony. Defendant was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 24 months, with a 48-month term of supervised release to follow.

Standard condition #7 of supervised release requires defendant to refrain from excessive use of alcohol. On March 26, 2002, the United States District Court for the Southern District of Florida modified defendant's conditions of release by adding a special condition ordering her to abstain from the use of alcohol and not patronize any establishment where alcohol is the principal item of sale.

Defendant began her term of supervised release on March 5, 2001. On August 27, 2002, jurisdiction of her case was transferred to the Western District of Wisconsin.

On June 3, 2003, a judicial review was held on this case. Defendant was serving a concurrent term of supervised release imposed after she was convicted of escape in the Southern District of Florida. At the judicial review of June 3, 2003, supervision on the escape charge, Case No. 02-CR-137-C, was revoked and defendant was committed to the custody of the Bureau of Prisons for a term of 24 months. No term of supervised release was imposed to follow this term of imprisonment. Defendant's term of supervised release in Case No. 02-CR-138-C was tolled.

On November 3, 2004, defendant was released from the custody of the Federal Bureau of Prisons and resumed serving her supervision term in this case. Now defendant has

stipulated that she violated standard condition #7, requiring her to refrain from the excessive use of alcohol, and the special condition of supervision added by the court in the Southern District of Florida directing her to abstain from all use of alcohol.

Defendant has admitted to the probation office that she was drinking in early and late April 2005. Further, breath tests taken on February 11, 2005, May 12, 2005 and May 23, 2005 tested positive for the presence of alcohol.

Using alcohol is a Grade C violation as defined by § 7B1.1(a)(3) of the sentencing guidelines policy statement for violations of supervised release. In addressing such a violation, the court has the discretion to revoke supervised release, extend the term of supervised release or modify the conditions of supervised release.

CONCLUSIONS

Defendant's violations require revocation. Accordingly, the 48-month term of supervised release for the importation of cocaine conviction imposed on defendant on January 6, 1999 and tolled on June 3, 2003 will be revoked.

At the time of defendant's original sentencing in this case, her criminal history category was IV. A Grade C violation and a criminal history category of IV result in a guideline range of 6 to 12 months, according to § 7B1.4(a). The statutory maximum to which defendant can be sentenced upon revocation is 36 months, pursuant to 18 U.S.C. ss

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.

After reviewing the non-binding policy statements of Chapter 7 of the sentencing guidelines, I have selected a sentence within the suggested guideline imprisonment range. Such a sentence will serve to protect the community and provide for the defendant's treatment needs. This sentence is to be followed by a one-year term of supervised release for the purpose of encouraging defendant to abstain from alcohol use and to insure that she continues to attend alcohol treatment programs.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on January 6, 1999, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of six months. A 12-month period of supervised release shall follow the term of imprisonment. All conditions of supervision previously imposed will remain in effect with the addition of the following special conditions of supervised release:

1. Defendant is to participate in inpatient or outpatient treatment or both and undergo testing for the use of alcohol by any means, including the use of a continuous electronic monitoring device, as directed by the probation office. Defendant is to pay the

costs of treatment and testing to the best of her ability as determined by the probation office.

2. Defendant is to complete a physical evaluation and a mental health evaluation to determine whether she is physically and mentally able to take medication designed to assist in the maintenance of abstinence from alcohol. Defendant is to pay the cost of the evaluations and the medication to the best of her ability as determined by the probation office.

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

Entered this 16th day of August, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

Chief District Judge