

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

---

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

02-CR-70-C-01

SCOTT FRANCIS SYE,

Defendant.

---

A hearing on the revocation of Scott Francis Sye's probation was held in this case on June 15, 2004, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Stephen Ehlke. Defendant was present in person and by counsel, Corey Chirafisi. Also present was Senior United States Probation Officer Michael D. Harper.

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

FACTS

On December 17, 2002, defendant was sentenced in this court to a five-year term of probation, following his conviction for mail fraud, in violation of 18 U.S.C. § 1341. This

crime is a Class D felony. Defendant was further ordered to pay restitution in the amount of \$5,200.00.

As a mandatory condition of probation, defendant was required not to commit another federal, state or local crime. Among other special conditions of probation, defendant was required to abstain from alcohol and illegal drug use.

Defendant began his five-year term of probation on December 17, 2002. On September 30, 2003, after defendant had failed to demonstrate a good faith effort to make restitution, passed worthless checks and stolen electricity, I modified defendant's probation by adding special condition #1, imposing a 45-day condition of home confinement with electronic monitoring.

Defendant has stipulated to violating the mandatory condition prohibiting him from committing another federal, state or local crime. On January 23, 2004, defendant was arrested for driving under the influence of alcohol (2d offense), operating a motor vehicle while having a prohibited alcohol content and operating a motor vehicle after revocation of license (2d offense). These charges are in violation of Wis. Stat. § 346.63 (1)(a)(b) and § 343.44(1)(b) and are class A misdemeanors. Further, defendant stipulates that he violated special condition #3, requiring him to abstain from all use of alcohol and illegal drugs, by using alcohol on January 23, 2004 and on April 1, 2004.

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 probation. In addressing such violations, the court has the discretion to revoke probation, extend the term of probation or modify the conditions of supervision.

### CONCLUSIONS

Defendant's violations require revocation. Defendant was given an opportunity to change when I sentenced him to a term of probation. He was given a second chance when I modified his probation in response to new criminal conduct. Even after having had these opportunities, defendant chose to operate a motor vehicle while intoxicated and without a valid driver's license, putting himself and the community at risk. Accordingly, the five-year term of probation imposed on December 17, 2002, will be revoked.

Defendant's original criminal history category was III. A Grade C violation and a criminal history category III give him a guideline range of 5-11 months. The statutory maximum to which defendant can be sentenced upon revocation is five years, pursuant to 18 U.S.C. § 1341. Title 18 U.S.C. § 3583(b) authorizes a term of supervised release not to exceed three years, because defendant's original offense was a Class D felony.

After reviewing the non-binding policy statements in Chapter 7 of the sentencing guidelines, I have selected a sentence of imprisonment below the guideline range with a condition that he reside in a community corrections center for 180 days. This sentence will

hold defendant accountable for his conduct, protect the community, and provide an opportunity for defendant to receive alcohol and drug treatment in a residential setting. Defendant has a serious drinking problem and is in need of intensive substance abuse treatment.

---

ORDER

IT IS ORDERED that the period of probation imposed on defendant on December 17, 2002, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 60 days. A three-year term of supervised release is to follow the term of imprisonment. It is further ordered that all special conditions that were imposed on December 17, 2002, are to remain in effect, including the condition that defendant pay restitution in the amount of \$5,200.00.

As a special condition of supervised release, defendant is to reside in a federally contracted community corrections center, namely the Fahrman Center in Eau Claire, Wisconsin, for a period of 180 days. This placement is to commence as soon after defendant's release from custody as a bed is available in the Fahrman Center. Defendant will be afforded no social or work release passes for the first 30 days of this placement. He is to provide for his own medical treatment and is required to successfully complete the center's treatment program. He is to pay no more than 25 per cent of his gross earnings as

subsistence.

Defendant is to be registered with local law enforcement agencies and the state attorney general before his release from confinement. Defendant does not have the financial means nor earning capacity to pay the cost of incarceration.

This sentence is to begin immediately.

Entered this 15th day of June 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge