

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMOTHY D. CIPRA,

Defendant.

ORDER

03-CR-052-S-01

Petition for revocation of defendant's supervised release came on to be heard before the Court in the above entitled matter on January 18, 2007, the government having appeared by Erik C. Peterson, United States Attorney for the Western District of Wisconsin, by Robert Anderson, Assistant United States Attorney; the defendant in person and by Michael Lieberman. Honorable John C. Shabaz, District Judge, presided.

From the record and stipulation the court makes the following findings of fact.

Defendant was sentenced in the United States District Court for the Western District of Wisconsin on August 27, 2003 following his conviction for manufacture of 50 or more marijuana plants, a Schedule I controlled substance, a Class B felony, in violation of 21 U.S.C. § 841(a)(1). Defendant was sentenced to 15 months' imprisonment to be followed by a six-year term of supervised release. On July 29, 2004 defendant began his term of supervised release.

Special Condition No. 4 of his supervised release states, "The defendant shall abstain from the use of alcohol and from the use of illegal drugs."

Defendant stipulated he tested positive for opiates on three occasions: October 4, 2006, Kroll Specimen No. B00573416; October 11, 2006, Kroll Specimen No. B00573417 and October 19, Kroll Specimen No. B00573419. He also stipulated that on October 26, 2006 he admitted to his probation officer that he used marijuana the weekend of October 14, 2006.

Defendant's conduct falls into the category of Grade C violations as defined by § 7B1.1(a)(2) 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 the term of supervised release or modify the conditions.

Defendant's violations warrant revocation. Accordingly, the six-year term of supervised release imposed on defendant on August 27, 2003 will be revoked and his conditions of release are continued.

Defendant's original criminal history category was II. Grade C violations coupled with Criminal History Category II result in a guideline range of imprisonment of four to ten months. The statutory maximum to which defendant can be sentenced upon revocation is three 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 three years if the offense for which the defendant was sentenced previously was a Class B felony.

After reviewing the non-binding policy statements in Chapter 7 of the Sentencing Guidelines, the Court has selected a sentence at the top of the guideline range. The intent of this sentence is to protect the community and deter defendant from future violations of his conditions of supervised release.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on August 27, 2003 is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of ten months. A three-year term of supervised release is ordered to follow the term of imprisonment. All previously imposed special conditions of supervised release shall remain as aforesaid and also be reimposed upon release from imprisonment with the addition of Special Condition No. 5, which states, "The defendant shall reside in a federally contracted residential reentry center, preferably the Fahrman Center, 3136 Craig Road, Eau Claire, Wisconsin, for a period of up to 120 days. Defendant is allowed work release privileges. Defendant is to complete the residential treatment program and follow the rules and regulations of Fahrman Center. Should defendant successfully completes the residential program and comply with the rules of the center, he may

be considered for an early discharge after 90 days upon the approval of the center director and the supervising probation officer. Defendant is required to provide for his own medical expenses and pay 25% of his adjusted gross income as subsistence unless waived by the program director of the residential re-entry center and approved by the federal Bureau of Prisons. This public law placement is to begin upon release from imprisonment."

The court also adds Special Condition No. 6 which states, "The defendant is to participate in outpatient mental health counseling as directed by the supervising U.S. probation officer."

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

Execution of the sentence of imprisonment is stayed until February 1, 2007 between 1:00 p.m. and 4:00 p.m., when defendant is to report to the Bureau of Prisons facility at Duluth, Minnesota. In the event defendant is unable to do so or the designation is not made by this date, he shall report at said date and time to the United States Marshal's office at 120 North Henry, Madison, WI. The present release conditions are continued until February 1, 2007.

Entered this 18th day of January, 2007.

BY THE COURT:

s/

JOHN C. SHABAZ
District Judge