

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

03-CR-0102-C-01

JOSE ANTONIO FAUSTINO-RODRIGUEZ

Defendant.

A hearing on the revocation of Jose Antonio Faustino-Rodriguez's supervised release was held in this case on September 29, 2003, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Paul Connell. Defendant was present in person and by counsel, Elizabeth M. Edwards-Jones. Also present was United States Probation Officer Tracy L. Russom.

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

FACTS

Defendant was sentenced in the Western District of Texas on July 27, 2000, following his convictions for conspiracy to possess with intent to distribute marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and 846, and possession with intent to distribute marijuana in violation of 21 U.S.C. § 841(a)(1). These crimes are classified as Class C felonies. Defendant was committed to the custody of the Bureau of Prisons to serve

concurrent terms of imprisonment of 31 months, with concurrent three-year terms of non-reporting supervised release to follow.

As a general condition of supervised release, defendant was ordered to not commit another federal, state or local crime.

Defendant began his terms of supervised release on September 21, 2001.

Defendant has stipulated to violation of the general condition prohibiting him from committing another federal, state or local crime. Specifically, on or about May 11, 2003, defendant was found to have illegally re-entered the United States of America. Illegal re-entry is classified as a felony by federal statute because the offense carries a term of imprisonment in excess of a year.

Defendant's conduct falls into the category of Grade B violations, as defined by § 7B1.1(a)(2) of the sentencing guidelines policy statement for violations of supervised release. Section 7B1.3(a)(1) provides that upon a finding of a Grade B violation, the court shall revoke supervised release.

CONCLUSIONS

Defendant's violation requires revocation. Accordingly, the three-year terms of supervised release imposed on defendant on July 27, 2000, will be revoked.

Defendant's original criminal history category was I. Pairing a Grade B violation with criminal history category of I produces a guideline range of 4 to 10 months. The statutory maximum to which defendant can be sentenced upon revocation 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 he was sentenced previously was a Class C felony.

I have reviewed the non-binding policy statements in Chapter 7 of the sentencing guidelines. I have decided to sentence at the bottom of the guideline range and will sentence defendant to concurrent terms of imprisonment of 4 months. This sentence takes into account defendant's cooperation with law enforcement at the time of his arrest.

ORDER

IT IS ORDERED that the periods of supervised release imposed on defendant on July 27, 2000, are REVOKED and defendant is committed to the custody of the Bureau of Prisons for terms of 4 months as to each of counts one and two, with the terms to run concurrently with each other but consecutively to the sentence imposed in Western District of Wisconsin 03-CR-0064-C-01. No supervised release is to follow.

Execution of this sentence begins immediately.

Entered this 29th day of September 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge