IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

ORDER

Plaintiff,

03-cr-126-bbc

v.

CHRISTOPHER TEMPLE,

Defendant.

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Defendant Christopher Temple has filed two motions in an attempt to undo the revocation hearing held in his case on February 11, 2011, at which I found that defendant had violated the terms of his supervised release. Defendant was sentenced to a term of imprisonment of nine months, with a two-year term of supervised release to follow. The order of revocation and sentence was entered on February 14, 2011.

On February 23, 2011, defendant filed a notice of appeal, a "motion to vacate judgment/findings" and a motion to correct his sentence or, in the alternative, to stay the imposition of his sentence pending appeal. (I interpret this last motion as a motion to stay the execution of his sentence, since the sentence was imposed on February 11.)

By filing a notice of appeal, defendant has prevented this court from hearing his

motions to vacate the judgment in the case or to correct his sentence. "The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." United States v. Turchen, 187 F.3d 735, 743 (7th Cir. 1999) (citing Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982); United States v. Ienco, 126 F.3d 1016, 1018 (7th Cir. 1997); Kusay v. United States, 62 F.3d 192, 193-94 (7th Cir. 1995)). See also United States v. Johnson, 437 F.3d 1053, 1058 (7th Cir. 2008). The rule preventing two courts from hearing the same case at the same time makes imminent sense in view of the judicial resources that would be wasted and the confusion that could result from dual jurisdiction. Without jurisdiction to hear defendant's motion for vacation of the judgment and the motion to correct his sentence, I must deny both.

Even if I had jurisdiction to hear defendant's motion to vacate the judgment, I would have to deny it because it has no merit. He complains that the government failed to notify his victims of the upcoming revocation hearing in time for them to appear, but in fact the government did provide them timely notice. If defendant thought those victims would have relevant information favorable to him, nothing prevented him from asking them to appear on his behalf. (It is unlikely that any of them would have had information relevant to at least two of the charges against defendant, which were his alleged failure to submit truthful and complete reports to his probation officer and his failure to report to the probation office

on December 10, 2010, as directed. It is possible that they would have been able to talk about defendant's alleged failure to provide a required notification of his conviction in connection with articles he wrote, but defendant has never indicated that they had any knowledge of this kind.)

Moreover, nothing in defendant's motions suggests that he has any new evidence to support his contention that it was error for the court to revoke his supervised release. He disagrees with his probation officer's view of his situation and her inability to recall on the witness stand the amount of restitution he had paid, but even he agrees that the repayment is less than $3,000. His challenges have nothing to do with his compliance with the conditions of his supervised release. Defendant wants to be left alone, supposedly to work at endeavors that will earn large amounts of money that can be paid to his victims as restitution; neither the probation officer nor the court is persuaded that granting him an early end to his supervised release would benefit his victims or the community, given defendant's willingness to defraud large numbers of victims in the past.

As for defendant's motion to correct his sentence, this is another motion that would have to be denied even if jurisdiction existed to hear it. The court has no authority to reconsider a sentence once it is imposed, except in very limited circumstances, including obvious error that violates legislative intention, United States v. Clark, 538 F.3d 803, 809 (7th Cir. 2008). None of the circumstances exist in this case.

Defendant's motion for a stay of sentence is a motion that I can consider even after he has filed a notice of appeal, but he has shown no reason why it should be granted. His appeal does not raise a substantial question of law or fact likely to result in a sentence that does not include a term of imprisonment or a reduced sentence that will exceed the expected duration of the appeal process,18 U.S.C. § 3143(b), which is the only ground on which it could be granted.

One last matter. Defendant's notice of appeal from the order of revocation and senence was not accompanied by the $455 fee for filing an appeal. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, I construe it as including a request for leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915. According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization "unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed." Defendant qualified for appointed counsel but chose to appear pro se during the criminal proceedings against him and I do not intend to certify that the appeal is not taken in good faith. Defendant's challenge to his sentence is not wholly frivolous. A reasonable person could suppose that it has some merit. Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000).

ORDER

IT IS ORDERED that defendant Christopher Temple's motions to vacate his judgment of commitment and to correct his sentence are DENIED because this court lacks jurisdiction to hear them; defendant's motion for a further stay of execution of his sentence is DENIED because defendant has not shown that his appeal raises a substantial question of law or fact.

Entered this 14th day of March, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge