

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

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UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

03-CR-172-C-01

CARL F. HARTWIG,

Defendant.  
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A hearing on the revocation of Carl F. Hartwig's supervised release was held in this case on March 20, 2007, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Timothy M. O'Shea. Defendant was present in person and by counsel, Jeff W. Nichols. Also present was Senior United States Probation Officer Michael D. Harper.

From the record I make the following findings of fact.

## FACTS

Defendant was sentenced in the Western District of Wisconsin on August 11, 2004, following his conviction for fraud and related activity in connection with counterfeit access devices, in violation of 18 U.S.C. § 1029(a)(1). This crime is a Class C felony. Defendant was committed to the custody of the Bureau of Prisons for a term of imprisonment of six months, with a 36-month term of supervised release to follow and ordered to pay restitution in the amount of \$150 and a fine of \$3,000. The restitution amount was paid in full on December 13, 2005.

As special conditions of supervised release, defendant was required to abstain from illegal drug use and participate in substance abuse counseling and testing.

Defendant began his term of supervised release on February 28, 2005. On September 29, 2005, I modified the conditions of his release by adding special condition no. 5, requiring defendant to abstain from all alcohol use and illegal drug use and participate in substance abuse treatment, including substance abuse counseling and testing.

The defendant has stipulated that he violated standard condition no. 7, by using marijuana as evidenced by positive urine specimens submitted for testing on August 4 and December 14, 2006. He is also in violation of special condition no. 5 for his failure to report as instructed for a counseling session on November 21, 2006, and failing to report for drug tests on November 22, November 29, and December 8, 2006. His 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 supervised release. In addressing such violations, the court has the discretion to revoke supervised release, extend it or modify the conditions of release.

### CONCLUSIONS

I have decided to revoke the term of supervised release because defendant refuses to acknowledge his marijuana addiction. He has resisted participation in substance abuse counseling and testing as instructed by the supervising probation officer. So long as defendant refuses to acknowledge his addiction to marijuana, he would not benefit from an order requiring him to undergo additional substance abuse treatment. Therefore, I have no option but to revoke the term of supervised release to hold him accountable for these violations. Accordingly, the three-year term of supervised release imposed on defendant on August 11, 2004, will be revoked.

Defendant's criminal history category is I. A Grade C violation coupled with a criminal history category I results in a guideline range of 3 to 9 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 selected a sentence near the top of the advisory guideline range. Such a sentence will be sufficient to hold defendant accountable for his violations of supervised release and protect the community.

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ORDER

IT IS ORDERED that the period of supervised release imposed on defendant is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of eight months. No term of supervised release shall follow. 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 or earning capacity to pay the cost of incarceration. The fine of \$3,000 imposed on August 11, 2004, with a current balance of \$2,575, is affirmed. Defendant can make monthly installments toward this fine through the Bureau of Prisons' Financial Responsibility Program during the term of imprisonment imposed.

The term of imprisonment is to commence immediately.

Entered this 11th day of April, 2007.

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