

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-178-C-01

MELVIN D. CARLTON,

Defendant.

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A hearing on the revocation of Melvin D. Carlton's supervised release was held in this case on October 16, 2006, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Rita M. Rumbelow. Defendant was present in person and by counsel, Howard S. Goldman. Also present was United States Probation Officer Helen H. Raatz.

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

FACTS

Defendant was sentenced in the Western District of Wisconsin on May 5, 2004, following his conviction for felon in possession of a firearm, in violation of 18 U.S.C.

§ 922(g)(1). This crime is a Class C felony. He was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 24 months, with a 36-month term of supervised release to follow.

Defendant began his initial term of supervised release on August 11, 2005. Thereafter, defendant violated his terms of supervised release by failing to report a change in residence, driving without a valid driver's license and insurance and failing to report a change of employment status to his probation officer. In response to these violations, on January 23, 2006, I modified defendant's conditions of supervised release by ordering him to reside at the Fahrman Center for no fewer than 60 days and no more than 120 days.

Defendant stipulates that he violated the statutory condition requiring him to refrain from any unlawful use of a controlled substance and special condition no. 4 requiring him to abstain from the use of alcohol and illegal drugs. On September 26, 2006, defendant submitted a urine specimen that tested positive for marijuana. The positive test result was confirmed by Kroll Laboratory on October 2, 2006.

Defendant stipulates that he violated standard condition no. 1, prohibiting him from leaving the judicial district without the permission of the court or probation officer. After defendant's supervision was transferred to Minnesota, Fahrman Center staff in Eau Claire, Wisconsin observed defendant in Eau Claire on September 30, 2006, at a time when defendant did not have permission from the U.S. Probation Office in the District of

Minnesota to travel to the Western District of Wisconsin.

Defendant stipulates that he violated standard condition no. 9, prohibiting him from associating with any person convicted of a felony unless granted permission to do so by the probation officer. On September 30, 2006, Fahrman Center staff observed defendant in the company of Frank Curry and Valeka Kiutukcief, both of whom were on federal supervision for felony convictions. Defendant did not have permission to associate with either felon.

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

### CONCLUSIONS

Defendant's violations warrant revocation. Accordingly, the three-year term of supervised release imposed on defendant on May 5, 2004, will be revoked.

Defendant's original criminal history category was III. A Grade B violation coupled with a criminal history category of III results in a guideline term of imprisonment of 8 to 14 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 a defendant was sentenced previously was a Class C felony.

After reviewing the non-binding policy statements of Chapter 7 of the Sentencing Guidelines, I have selected a sentence near the top of the guideline range. The intent of this sentence is to reflect the seriousness of defendant's inability to comply with the conditions of his supervised release, provide him a drug-free, structured setting and protect the community.

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ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on May 5, 2004, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 12 months. A 12-month term of supervised release shall follow. All standard and special conditions of supervised release previously imposed shall remain in effect with the exception of special condition no. 5 requiring defendant to reside at the Fahrman Center for no fewer than 60 days and no more than 120 days.

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

Entered this 16th day of October, 2006.

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