

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

04-CR-03-C-01

JUSTIN J. JOHNSON,

Defendant.

A hearing on the revocation of Justin J. Johnson's supervised release was held in this case on March 2, 2006, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Robert A. Anderson. Defendant was present in person and by counsel, Joanne M. Keane. Also present was United States Probation Officer Traci L. Jacobs.

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

FACTUAL FINDINGS

Defendant was sentenced in the Western District of Wisconsin on June 17, 2004, following his conviction for the manufacture of methamphetamine, in violation of 21 U.S.C.

§ 841(a)(1). This offense is a Class C felony. Defendant was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 27 months, with a 36-month term of supervised release to follow. On September 21, 2004, I amended the judgment to set the amount of restitution at \$3,113.50.

Defendant began his term of supervised release on December 9, 2005. On January 26, 2006, I modified the conditions of his supervised release by adding special condition #5, directing him to reside at the Chippewa County jail, Chippewa Falls, Wisconsin, for a period not less than 60 days and not more than 150 days. Also, in response to defendant's use of drugs, lying to his probation officer and failing to report a change of employment status to his probation officer, I modified the conditions of his supervised release by adding special condition #6, directing defendant to participate in psychological/psychiatric counseling or a treatment program as approved by the supervising probation officer.

Defendant stipulates that he violated special condition #5, directing him to complete a term of imprisonment of not less than 60 days and not more than 150 days at the Chippewa County jail when, on February 10, 2006, he failed to report to the jail to begin his jail sentence.

Defendant's conduct falls into the category of a Grade C violation, as defined by §7B1.1(a)(3) of the sentencing guidelines policy statement for violations of supervised release. In addressing such violations, a court has the discretion to revoke supervised release,

extend the term of supervised release or modify the conditions of release.

CONCLUSIONS

Defendant's violation warrants revocation. He willfully failed to report to the Chippewa County jail, as directed. Accordingly, the three-year term of supervised release imposed on defendant on June 17, 2004, will be revoked.

Defendant's original criminal history category was II. A Grade C violation coupled with a criminal history category of II results in a guideline term of imprisonment of 4 to 10 months. The statutory maximum to which defendant can be sentenced upon revocation is two 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 two years if the offense for which he 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 at the bottom of the guideline range. The intent of this sentence is to reflect the seriousness of defendant's violation, provide him a drug-free, structured setting and protect the community.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on June 17, 2004, is REVOKED and defendant is committed to the custody of the Bureau of Prisons

for a term of four months. A two-year term of supervised release shall follow the term of imprisonment. Defendant is to be registered with local law enforcement agencies and the state attorney general before his release from confinement.

All conditions of supervised release previously imposed, excluding special condition #5, directing defendant to reside at the Chippewa County jail, will remain in effect. Additionally, I am adding special condition #7, directing defendant to participate in a home confinement program for a period of 90 days. The home confinement may include electronic monitoring; if it does, defendant shall be responsible for the cost of the monitoring. While on home confinement, defendant will be allowed out of his home for up to ten hours a day, six days a week, for work purposes and for mental health and substance abuse treatment.

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

Entered this 2d day of March, 2006.

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