

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 October 18, 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 Michael D. Harper.

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 June 17, 2004, following his conviction for the manufacture of methamphetamine, in violation of 21 U.S.C.

§ 841(a)(1). This crime 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 initial term of supervised release on December 9, 2005. He violated his terms of supervised release by using illegal drugs, knowingly associating with a felon, lying to his probation officer and failing to report a change of employment status to his probation officer. In response to these violations, on January 26, 2006, I modified defendant's conditions of supervised release by ordering him to reside at the Chippewa County jail for no fewer than 60 days and no more than 150 days, and to participate in psychological or psychiatric counseling. On March 2, 2006, defendant's term of supervised release was revoked after he failed to report to the Chippewa County jail to begin his jail sentence. Defendant began his second term of supervised release on June 16, 2006. Defendant stipulates that he violated standard condition No. 9 prohibiting him from associating with any persons engaged in criminal activity and any person convicted of a felony unless granted permission to do so by the probation officer. On September 11, 2006, defendant was observed by law enforcement at the residence of Dennis Sullender, a known felon. Defendant did not have permission to associate with Mr. Sullender.

Defendant stipulates that he violated special condition No. 7 requiring him to

participate in a home confinement program for a period of 90 days. On September 12, 2006, he failed to return home and his whereabouts and activities were unknown. On September 13, 2006, in response to defendant's failure to return home, I issued a warrant for his arrest.

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, I have the discretion to revoke supervised release, extend the term of supervised release or modify the conditions of release.

CONCLUSIONS

Defendant's violations and his willful failure to participate in his home confinement program warrant revocation. Accordingly, the two-year term of supervised release imposed on defendant on March 2, 2006, 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 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.

After reviewing the non-binding policy statements of Chapter 7 of the Sentencing Guidelines, I have selected a sentence at the statutory maximum. The intent of this sentence is to provide defendant a drug-free, structured setting, to encourage him to address his lengthy history of drug abuse and to protect the community.

_____ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on March 2, 2006, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of two years. No term of supervised release shall follow.

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

Entered this 20th day of October, 2006.

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