

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

04-CR-164-C-04

JOSE DAVID SUAREZ,

Defendant.

A hearing on the revocation of Jose David Suarez's supervised release was held in this case on January 3, 2007, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Jeffrey Anderson. Defendant was present in person and by counsel, Paul F.X. Schwartz. Also present was United States Probation Officer Michael D. Harper.

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

FACTS

Defendant was sentenced in the Western District of Wisconsin on June 1, 2005, following his conviction for distribution of cocaine, a Schedule II controlled substance, in

violation of 21 U.S.C. § 841(a)(1). This offense 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. On September 23, 2005, I reduced the term of imprisonment from 24 months to 17 months because of the substantial assistance defendant provided to local law enforcement agencies.

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

On September 23, 2005, defendant began his term of supervised release. On June 1, 2006, I modified the conditions of his release by adding Special Condition No. 5 requiring him to reside at the Fahrman Center in Eau Claire, Wisconsin, for a period of 120 to 180 days. He failed to abide by the rules and regulations of the Fahrman Center and was discharged for unsuccessful completion of the program on July 20, 2006. On July 24, 2006, I modified this condition and required defendant to reside for a period of 120 to 180 days at Rock Valley Community Programs, Janesville, Wisconsin. On December 4, 2006, he completed this placement successfully.

Defendant has stipulated to violating Standard Condition No. 7 and Special Condition No. 3. On December 22, 2006, he admitted to the probation office that he had been using cocaine. Defendant's conduct falls into the category of Grade B violations, as

defined by § 7B1.1(a)(2) of the sentencing guidelines policy statement for violations of supervised release because his federal offense of conviction involved the illegal distribution of cocaine. Defendant's positive test for cocaine use is evidence that he illegally possessed cocaine prior to using it.

CONCLUSIONS

Defendant's violations require revocation. Defendant tested positive for cocaine use on March 20, April 27, May 30, and December 18, 2006. 18 U.S.C. § 3583(g)(4) requires revocation of the term of supervised release if defendant tests positive for illegal drug use more than three times in the course of one year. Accordingly, the three-year term of supervised release imposed on defendant on June 1, 2005, will be revoked.

Defendant's original criminal history category was V. Grade B violations coupled with a criminal history category of V result in a guideline range of imprisonment of 18 to 24 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 at the top of the guideline range because defendant is in need of treatment in a confined setting. He has been involved in outpatient and residential

treatment at Rock Valley Community Programs during his term of supervised release. Within two weeks of his discharge from Rock Valley Community Programs he tested positive again for cocaine use. With a 24-month term of imprisonment, defendant will be able to receive the full treatment benefits of the Bureau of Prisons' 500 hour residential treatment program. The sentence of imprisonment will hold defendant accountable for his violations of supervised release and will protect the community.

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 24 months. I recommend that defendant serve the last 60 days of his confinement in a federally approved community corrections center, with work release privileges. No term of supervised release shall follow this term of imprisonment. 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 term of imprisonment is to commence immediately. The government is to provide the Bureau of Prisons a list of institutions to which defendant should not be designated.

Entered this 3d day of January 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

Chief District Judge