

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEREMY F. CUNITZ,

Defendant.

ORDER

05-10019-X

On December 20, 2006 this court held a hearing on the petition to revoke the supervised release of defendant Jeremy Kunitz. Kunitz was present with his attorney, Christopher Malloy. The government was represented by AUSA Elizabeth Altman.

The defendant was sentenced in the Western District of Wisconsin on January 27, 2001, following his conviction for Count 1: Operating a Motor Vehicle Under the Influence of an Intoxicant, in Violation of Wis. Stats. § 346.63(1)(a); a Class A misdemeanor. Count 2: Operating a Motor Vehicle With a Prohibited Alcohol Concentration, in Violation of Wis. Stats. § 346.63(1)(b); a Class A misdemeanor. Count 3: Operating After Revocation, in Violation of Wis. Stats. § 343.44(1)(b); a Class A misdemeanor (all Counts assimilated by 18 U.S.C. § 13).

He was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 60 days, with a one-year term of supervised release to follow. As a special condition of supervised release, the defendant was ordered to abstain from the use of alcohol and not patronize any establishment where the principal item of sale is alcohol. The defendant was

ordered to submit to drug and alcohol testing commencing within 15 days of release and 60 drug tests annually thereafter. The defendant began his term of supervised release on April 26, 2004.

The defendant has stipulated that he violated the special condition of supervised release which directs him to abstain from the use of alcohol. On October 19 and 23, 2006, the defendant drank alcohol. The defendant has stipulated that he violated the special condition that he submit to drug and alcohol testing. On November 16 and 17, 2006, and December 8, 2006, the defendant failed to report for drug and alcohol testing.

The 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, the Court has the discretion to revoke supervised release, extend the term of supervised release, or modify the conditions of release. The defendant's violation warrants revocation. Accordingly, the one-year term of supervised release imposed on the defendant on January 27, 2006, will be revoked.

The defendant's original criminal history category was III. A Grade C violation coupled with a criminal history category of I results in a guideline term of imprisonment of 5 to 11 months. The statutory maximum to which the defendant can be sentenced upon revocation is one year, 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 one year if the offense for which the defendant was sentenced previously was other than a Class A, B, C, or D felony.

After reviewing the non-binding policy statements of Chapter 7 of the Sentencing Guidelines and after hearing the arguments of the parties, I have selected a sentence at the

bottom of the guideline range of imprisonment. The intent of this sentence is to deter the defendant from future criminal acts and protect the community. After hearing further argument on the issue of self-surrender after the holidays, I ordered defendant taken into custody immediately for reasons stated.

ORDER

IT IS ORDERED that the period of supervised release imposed on the defendant is REVOKED and the defendant is committed to the custody of the Bureau of Prisons for a term of five months with one year of supervised release to follow. The defendant is to be registered with local law enforcement agencies and the state attorney general before his release from confinement.

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

Entered this 20th day of December, 2006.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge