

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

05-CR-190-C-01

WILSON VARGAS,

Defendant.

A hearing on the revocation of Wilson Vargas's supervised release was held in this case on January 11, 2006, before United States District Judge Barbara B. Crabb. The government appeared by Assistant U.S. Attorney Grant Johnson. Defendant was present in person and by counsel, Robert C. Howard III. Also present was United States Probation Officer Clark J. Rodgers.

From the record and the evidence presented at the hearing, I make the following findings of fact.

FACTS

Defendant was sentenced in the District of Maryland on December 18, 1995,

following his conviction for conspiracy to distribute and possess with intent to distribute a mixture containing cocaine and heroin, in violation of 21 U.S.C. § 846, a Class A felony. He was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 44 months, with a five-year term of supervised release to follow.

As standard conditions of supervised release, defendant was ordered not to leave the judicial district without permission of the court or probation officer and to notify the probation officer within 72 hours of any change in residence or employment.

Defendant began his term of supervised release on June 23, 1998, under the supervision of the U.S. Probation Office for the Southern District of New York. In August 1998, defendant was found to have been absent from his employment and away from his residence of record for several days. On September 1, 1998, he failed to report as directed to the office of his supervising probation officer. Defendant has had no contact with the supervising probation office since early August 1998.

On December 7, 1998, the District Court for the District of Maryland issued a warrant for defendant's arrest. Defendant was arrested in this district on November 1, 2005. On December 21, 2005, the District of Maryland transferred jurisdiction of this matter to the Western District of Wisconsin.

I find that in August 1998, defendant changed his residence and employment without notifying the supervising U.S. probation officer. The probation office has not known his

whereabouts from then until his arrest on November 1, 2005. Defendant's actions and failure to notify his supervising probation officer are violations of standard condition #1 of his supervised release prohibiting him from leaving the judicial district without permission of the court or probation officer and standard condition #6 requiring him to notify the probation officer within 72 hours of any change in residence or employment.

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

CONCLUSIONS

Defendant began his term of supervised release on June 23, 1998. His failure to cooperate with the probation office and obey the conditions of his supervised release demonstrate that he is not amenable to supervision. Accordingly, the five-year term of supervised release imposed on defendant on December 18, 1995, will be revoked.

At the time of defendant's sentencing, his criminal history category was Category I. A Grade C violation and a criminal history category of I result in a guideline imprisonment range of 3 to 9 months. The statutory maximum to which defendant can be sentenced upon revocation is five 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 five years' imprisonment if the offense for which he was sentenced previously was a Class A felony.

After reviewing the non-binding policy statements of Chapter 7 of the sentencing guidelines, I have selected a sentence at the top of the guideline range in order to impress upon defendant the seriousness of his failure to serve his term of supervised release as ordered by the sentencing court.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on December 18, 1995, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 9 months. No term of supervised release shall follow.

Defendant does not have the financial means or earning capacity to pay the cost of incarceration. Defendant shall comply with the rules and regulations of the Bureau of Investigation and Customs Enforcement under the United States Department of Homeland Security and shall not re-enter the United States without legal permission. if he should be deported or excluded from the United States, either voluntarily or involuntarily, The probation officer is directed to send the U.S. Department of Homeland Security - Bureau of Investigation and Customs Enforcement, a certified copy of this judgment and is to

provide the court with a copy of the transmittal letter. Execution of this sentence will begin immediately.

Entered this 11th day of January, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

Chief District Judge