

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

06-cr-104-bbc-1

DERRICK L. GARRETT,

Defendant.

A hearing on the probation office's petition for judicial review of Derrick L. Garrett's supervised release was held on October 15, 2013, before U.S. District Judge Barbara B. Crabb. The government appeared by Assistant U.S. Attorney David Reinhard. Defendant was present in person and by Supervisory Associate Federal Defender Michael W. Lieberman. Also present was Senior U.S. Probation Officer Michael J. Nolan.

From the record and from the testimony given in court, I make the following findings of fact.

FACTS

Defendant was sentenced in the Western District of Wisconsin on October 5, 2006, following his conviction for distribution of 50 or more grams of cocaine, a Schedule II controlled substance, in violation of 21 U.S.C. § 841(a)(1). This offense is a Class A felony. Defendant was committed to the custody of the Bureau of Prisons to serve a term of

imprisonment of 120 months, with a five-year term of supervised release to follow. On October 4, 2007, defendant's sentence was amended to a 78-month custodial sentence followed by a five-year term of supervised release. On March 14, 2008, defendant's sentence was amended again, to a 63-month custodial sentence followed by a five-year term of supervised release. Defendant began his term of supervised release on June 11, 2010.

Defendant violated the mandatory condition prohibiting him from committing another federal, state or local crime; Standard Condition No. 1 prohibiting him from leaving the judicial district without permission; and Standard Condition No. 7 prohibiting him from purchasing, possessing, using, distributing or administering any narcotic or other controlled substance, when he sold .4 gram of heroin to a confidential informant from his residence in Beloit, Wisconsin, on July 1, 2013. Although defendant contests this finding, I am persuaded that he sold this heroin to a confidential informant on July 1, 2013. It is true that the informant never identified a picture of defendant, and she told the police she had been buying drugs from defendant for 10 years, when defendant had been in prison for 6 of those years. However, she went to the residence where defendant lived with \$40 in marked money, returned with heroin and defendant was arrested the next day with the marked money in his possession. Later that same day, under police surveillance, defendant traveled to Rockford, Illinois, in the Northern District of Illinois, although he had no permission to travel outside the Western District of Wisconsin.

Defendant violated Special Condition No. 4, requiring him to abstain from the use of illegal drugs, when he submitted a urine specimen on September 15, 2013 that tested

positive for marijuana and he admitted to using marijuana.

Defendant's conduct falls into the category of Grade A violations. Section 7B1.3(a)(1) of the advisory guidelines provides that the court shall revoke supervised release.

CONCLUSIONS

Defendant's violations warrant revocation. Defendant's criminal history category is II. With a Grade A violation, his advisory guideline range of imprisonment is 27 to 33 months. The statutory maximum to which he can be sentenced upon revocation is five years under 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 if the offense for which the person 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. The intent of this sentence is to hold defendant accountable for his violations and to protect the community.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on October 5, 2006, amended on October 4, 2007, and again on March 14, 2008, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 33 months. I recommend that defendant be housed as close as possible to his family in Beloit, Wisconsin. No supervised release is to follow the term of incarceration. Defendant

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

Entered this 16th day of October, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

U.S. District Judge