

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

06-cr-138-bbc-1

JARVIS T. McKEE,

Defendant.

A hearing on the probation office's petition for judicial review of Jarvis T. McKee's supervised release was held on April 9, 2013, before U.S. District Judge Barbara B. Crabb. The government appeared by Assistant U.S. Attorney Rita M. Rumbelow. Defendant was present in person and by counsel, Kim Zion. Also present was U.S. Probation Officer Shawn P. Robinson.

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 December 21, 2006, following his conviction for possession with intent to distribute 5 grams or more of cocaine base (crack cocaine), a Schedule II controlled substance, in violation of 21 U.S.C.

§ 841(a)(1). This offense is a Class B felony. Defendant was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 105 months, with a 48-month term of supervised release to follow. Some time later, defendant moved for a reduction under 18 U.S.C. § 3582, and his term of imprisonment was reduced from 105 months to 78 months. The 48-month term of supervised release to follow imprisonment was affirmed. On October 17, 2011, the term of imprisonment was reduced again to time served, to be effective November 1, 2011. The 48-month term of supervised release to follow imprisonment was affirmed.

Defendant began his term of supervised release on November 1, 2011. He violated Standard Condition No. 7, prohibiting his possession of any narcotic or controlled substance except as prescribed by a physician, when he possessed marijuana on January 4, 2013.

Defendant's conduct falls into the category of a Grade C violation. Section 7B1.3(a)(1) of the advisory guidelines provides that the court may revoke the term of supervised release, extend it or modify it, but 18 U.S.C. § 3583(g) requires mandatory revocation for the possession of a controlled substance.

CONCLUSIONS

Defendant's violation requires revocation. Accordingly, the 48-month term of supervised release imposed on December 21, 2006 and affirmed on June 5, 2008, and

October 17, 2011, will be revoked.

Defendant's criminal history category is V. With a Grade C violation, he has an advisory guideline term of imprisonment of 7-13 months. Under 18 U.S.C. § 3583(e)(3), the statutory maximum to which defendant can be sentenced upon revocation is 24 months because this offense is a Class C felony.

After reviewing the non-binding policy statements of Chapter 7 of the Sentencing Guidelines, I have selected a sentence within the advisory 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 December 21, 2006 and affirmed on June 5, 2008 and October 17, 2011, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 7 months. No term of supervised release shall follow.

Defendant is neither a flight risk nor a danger to the community. Accordingly, execution of the sentence of imprisonment only is stayed until June 3, 2013, when defendant is to report between the hours of 10:00 a.m. and noon, to an institution to be designated by further court order or to the U.S. Marshals Service. The present release conditions are continued until June 3, 2013.

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 his incarceration.

Entered this 9th day of April, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

U.S. District Judge