

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL M. THOMPSON,

Defendant.

ORDER

06-CR-144-S-01

Petition for revocation of defendant's supervised release came on to be heard before the Court in the above entitled matter on January 4, 2007, the government having appeared by Erik C. Peterson, United States Attorney for the Western District of Wisconsin, by Grant Johnson, Assistant United States Attorney; the defendant in person and by Erika Bierma. Honorable John C. Shabaz, District Judge, presided.

From the record the Court makes the following findings of facts.

Defendant was sentenced in the United States District Court for the Eastern District of Wisconsin by the Honorable Charles N. Clevert on July 31, 2002 following his conviction for possession of cocaine with intent to distribute, a Class C felony, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. Defendant was sentenced to 68 months imprisonment to be followed by a three-year term of supervised release.

On March 21, 2006 Judge Clevert added a special condition of supervised release requiring defendant to "participate in an outpatient mental health program specifically to treat sex offenders which may include periodic polygraph examinations."

On May 22, 2006 defendant began his term of supervised release. On July 31, 2006 jurisdiction was transferred from the Eastern District of Wisconsin to the Western District of Wisconsin.

After hearing the testimony and evidence, the Court finds that defendant did violate Special Condition No. 11 of his supervised release which requires him to participate in an outpatient mental health program specifically to treat sex offenders. He repeatedly violated this condition by failing to participate in the program which led to his dismissal from sex offender treatment on July 24, 2006. The Court determines that merely showing up, having a poor attitude and being argumentative does not constitute participation.

Defendant's conduct falls into the category of a Grade C violation as defined by § 7B1.1(a)(2) 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.

Defendant's violations of special condition #11 warrant revocation. Accordingly, the three-year term of supervised release imposed on defendant on July 31, 2002 will be revoked.

Defendant's original criminal history category was V. Grade C violations coupled with a criminal history category of V results in a guideline term of imprisonment of 7 to 13 months. The statutory maximum to which defendant can be sentenced upon revocation is two 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 two years if the offense for which the defendant was previously sentenced was a Class D felony.

The Court determines that a sentence at the statutory maximum, 2 years, is reasonable and necessary to protect the community, being of the opinion after hearing the defendant's comments and his request for said sentence prior to sentencing that he will not benefit from further counseling.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on July 31, 2002, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 24 months. No term of supervised release will follow.

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

Entered this 4th day of January, 2007.

BY THE COURT:

s/

JOHN C. SHABAZ
District Judge