

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JARRETT JAMES,

Defendant.

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ORDER

07-cr-163-bbc

Defendant Jarrett James has filed a motion under 18 U.S.C. § 3583(e)(2) to modify the conditions of his supervised release and to be re-sentenced “in accordance with 3553(a) factors [,] U.S. v. Neal and other Seventh Circuit precedent.” Although defendant has served only about 95 months of his 504-month sentence for two counts of armed bank robbery and two counts of use of a firearm in furtherance of a crime of violence, he seeks modification of the conditions of release imposed upon him in 2008 or for a full re-sentencing that complies with the strictures placed on sentencing judges when imposing conditions of release. See, e.g., United States v. Thompson, 777 F.3d 368 (7th Cir. 2015). For example, he complains (erroneously) that the court did not give him advance notice of the conditions it was intending to impose. He complains as well that the court did not explain why each condition was reasonably related to the factors identified in § 3553(a), such as the nature and circumstances of the offense, the defendant’s history and

characteristics, the need for deterrence or other factors set out in § 3553(a). The motion will be denied as untimely, but defendant will be free to seek modification of those conditions when he is released from prison.

Defendant could not have challenged the conditions of his release either in 2008, when he appealed his sentence immediately after his sentencing or in 2010, when he filed a motion for post conviction relief under 28 U.S.C. § 2255 (case no. 10-cv-615-bbc), but he did not do so. Until he is released from the lengthy term of imprisonment he is serving, it is essentially immaterial what his conditions of his release are. Only when he is released, or about to be released, will those conditions have real significance to him. At that time, he will have a chance to challenge them, as the defendant did in United States v. Neal, 810 F. 512 (7th Cir. 2016), the case upon which he relies.

In Neal, the defendant raised an objection to a particular condition after he had been released from prison, had violated his term of supervised release and had completed a second term of imprisonment. Upon release from prison for the second time, he asked the district court to vacate a specific condition of his supervised release that authorized warrantless searches of his reliance and his person. Id. at 514. On appeal, the Court of Appeals for the Seventh Circuit considered first whether the defendant could bring such an appeal since he had not raised the issue on his direct appeal following his sentencing. The court acknowledged that under § 3583(e)(2), a district court has the authority to “modify, reduce, or enlarge the conditions” at any time before the term of supervised release expires. Id. at 516 (citing United States v. Ramer, 787 F. 3d 837, 838 (7th Cir. 2015)). As the court of

appeals explained, a district court may have many reasons for modifying or clarifying a defendant's conditions of supervised release long after the term was imposed, such as changes in the defendant's circumstances and new ideas of methods of rehabilitation. *Id.* (citing United States v. Lilly, 206 F. 3d 756, 759, 761-62 (7th Cir. 2000)).

Nevertheless, defendant has not shown any reason why his conditions of supervised release should be reconsidered at this time. It will be many years before they take effect and defendant's needs are sure to change between now and his release from custody. It would be a poor use of judicial resources to consider today what requirements would be appropriate for him when he completes his sentence.

Insofar as defendant contends that the way in which the conditions were imposed in 2008 violates the law set out in United States v. Thompson, 777 F. 3d 368 (7th Cir. 2015), his challenge comes too late. In Thompson, the court of appeals remanded four cases to the district courts on the ground that the courts had erred in various ways in imposing the conditions by not explaining such matters as why the conditions were relevant to the particular defendant and the crime for which he had been convicted or why they were relevant to a particular defendant's supervision needs. The court of appeals reminded the district courts that because conditions of supervision are part of the sentence imposed, a court is required to "state in open court the reasons for its imposition of the particular sentence,' 18 U.S.C. § 3553(c), and in determining the length of the term and the conditions of supervised release, shall consider the factors set forth in eight enumerated subsections of section 3553(a)." *Id.* at 373. Finding that in the cases it was considering, the sentencing

courts had not enumerated orally all of the conditions included in the written judgment, had imposed conditions that were not tailored precisely to the defendant and had not explained why a particular condition was reasonably related to the offense and the goals of rehabilitation and “involv[ed] no greater deprivation of liberty than is reasonably necessary to achieve these goals,” *id.* at 376 (quoting United States v. Goodwin, 717 F. 3d 511, 523-24 (7th Cir. 2013)), the court remanded the cases for re-sentencing.

The court of appeals criticized the sentencing court for not providing the parties advance notice of the conditions it was considering and the reasons for each of the conditions and for using conditions that were not clear or duplicated other conditions or that might be unconstitutional. One of these was the often-used condition that a person on supervised release must answer truthfully any question from the supervising probation officer, which the court suggested might “impinge on constitutional rights.” *Id.* That at 379.

Defendant alleges that in his case, the court failed to give him notice of the possible conditions in advance, failed to state in open court the reasons for the imposition of each condition and why it was deemed necessary for him and failed to tailor each condition to him and to the offense he committed. These allegations would have been appropriately raised on direct appeal or in a timely motion for relief under 28 U.S.C. § 2255. They are not appropriate in a motion brought long after defendant’s other routes of appeal have proved unsuccessful and midway through a term of imprisonment. As was true in Neal, once defendant has been released, he will have an opportunity to have his conditions of release reviewed by the sentencing court or its successor. Until then, however, it would be a poor

use of judicial resources to spend time reviewing conditions that have no current effect on him.

Under Rule 11 of the Rules Governing Section 2255 Proceedings, the court must issue or deny a certificate of appealability when entering a final order adverse to a petitioner. To obtain a certificate of appealability, the applicant must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Tennard v. Dretke, 542 U.S. 274, 282 (2004). This means that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) (internal quotations and citations omitted). Petitioner has not made a substantial showing of a denial of a constitutional right so no certificate will issue.

Defendant is free to seek a certificate of appealability from the court of appeals under Fed. R. App. P. 22, but that court will not consider his request unless he first files a notice of appeal in this court and pays the filing fee for the appeal or obtains leave to proceed in forma pauperis.

#### ORDER

IT IS ORDERED that defendant Jarrett James's motion brought under 18 U.S.C. § 3583(e)(2) for modification of the conditions of his supervised release and for re-sentencing is DENIED, without prejudice to defendant's raising the motion again when he is about to

be released.

Further, IT IS ORDERED that no certificate of appealability shall issue. Defendant may seek a certificate from the court of appeals under Fed. R. App. P. 22.

Entered this 27th day of July, 2016.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge