

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

EARL S. STUART,

Defendant.

ORDER

10-cr-23-bbc

Defendant Earl S. Stuart has filed a “motion to conform judgment in a criminal case with oral pronouncements at sentencing.” Dkt. #28. He contends that when he was sentenced, the court agreed with him and his counsel that it was not necessary to include a provision in the conditions of his supervised release requiring him to abstain from all use of alcohol. Instead, the court restricted him from frequenting taverns. However, when the judgment was reduced to writing, it included a provision restricting his alcohol use to an amount not exceeding the legal limit in the state in which he resides. Defendant argues that there is an inconsistency between the oral sentence and the written sentence and that the judgment should be corrected to conform to the oral sentence. He also asks the court to vacate a condition of release requiring him to perform 20 hours a week of community service if he is not employed at a regular lawful occupation, saying that this condition was not included in the oral sentence.

I agree with defendant that the community service condition was not part of the oral sentence and should be vacated, but the alcohol use condition is not subject to attack. After defendant received his copy of the presentence report, his counsel filed a written objection to the proposed a condition requiring defendant to abstain from any alcohol consumption. In the addendum to the presentence report, dkt. #11, the probation office proposed to change the condition to provide: “Defendant’s alcohol use is not to exceed the legal limit for driving in the state in which he resides and he is not to frequent taverns or any other establishment in which alcoholic beverages are the principal item for sale.” Defendant accepted this changed condition at sentencing; his agreement to the condition bars him from arguing now that the court erred in imposing it. In any case, the court’s oral statement that it was removing the requirement that defendant *abstain* from alcohol is consistent with the written sentence.

This court retains the authority to modify the conditions of supervised release to better serve the purposes of 18 U.S.C. § 3553(a), United States v. Monteiro, 270 F.3d 465, 472 (7th Cir. 2001), but defendant has not shown any reason to change the restriction on his alcohol use from the limit imposed on him at sentencing and included in the judgment and commitment order.

As to the fifth condition involving community service, defendant is correct that I failed to include that condition in the sentence announced from the bench. That is an inconsistency that warrants removal of the condition at this time.

ORDER

IT IS ORDERED that defendant Earl S. Stuart's motion to conform the judgment entered in his case, dkt. #28, is DENIED as to the fourth condition of defendant's supervised release relating to alcohol use and GRANTED as to the fifth condition relating to community service. The fourth condition remains in place; the fifth condition is vacated.

Entered this 31st day of July, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge