

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

11-cr-56-bbc-1

FOREST S. SHOMBERG,

Defendant.

A hearing on the probation office's petition for judicial review of Forest S. Shomberg's supervised release was held on April 29, 2013, before U.S. District Judge Barbara B. Crabb. The government appeared by Assistant U.S. Attorney Elizabeth G. Altman. Defendant was present in person and by counsel, Supervisory Associate Federal Defender Michael W. Lieberman. 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 November 10, 2011, following his conviction for felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). This offense is a Class C felony. He was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 12 months, with a 24-month term of supervised release to follow.

Defendant began his original term of supervised release on May 22, 2012. On June 25, 2012, he violated the special condition requiring him to spend the first 12 months of his supervision in a residential reentry center, when he was terminated as an unsuccessful completion case from Attic Correctional Services' Schwert House in Madison, Wisconsin. As an alternative to revocation, he was placed at Rock Valley Community Programs in Janesville, Wisconsin to complete his 12-month placement. On August 19, 2012, he violated the same special condition again when he was terminated as an unsuccessful completion case from Rock Valley. Defendant violated Special Condition No. 5, requiring him to abstain from the use of alcohol, when he consumed alcohol on or about June 24, 2012, and again on or about August 18, 2012. Defendant was sentenced to a four-month term of incarceration to be followed by a 24-month term of supervised release. All standard and special conditions of supervised release previously imposed were to remain in effect and Special Condition No. 6 was added to specify that a 12-month residential reentry center placement be completed at Fahrman Center in Eau Claire, Wisconsin.

Defendant began his second term of supervised release on November 28, 2012. On March 25, 2013, he violated Special Condition No. 6, requiring him to spend the first 12 months of his supervision at the Fahrman Center, when he was terminated as an unsuccessful completion case.

Defendant's conduct falls into the category of a Grade C violation. Section 7B1.3(a)(2) of the advisory guidelines provides that the court has the discretion to revoke supervised release, extend it or modify the conditions of release.

CONCLUSIONS

Defendant's violation warrants revocation. Accordingly, the 24-month term of supervised release imposed on defendant on September 14, 2012, will be revoked.

Defendant's criminal history category is VI. With a Grade C violation, he has an advisory guideline range of imprisonment of 8 to 14 months. The statutory maximum to which defendant can be sentenced upon revocation is 24 months 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 two years if the offense for which defendant was sentenced previously was a Class C felony.

After reviewing the non-binding policy statements of Chapter 7 of the Sentencing Guidelines, I have selected a sentence below the advisory sentencing guideline range. The intent of this sentence is to hold defendant accountable for his violation and to protect the community.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant Forest Shomberg on September 14, 2012, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of four months, with no supervised release to follow.

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

Entered this 29th day of April 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

U.S. District Judge