

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<p style="text-align:center">UNITED STATES OF AMERICA</p> <p style="text-align:center">v.</p> <p style="text-align:center">SCOTT MARKS, Defendant.</p>	<p style="text-align:center">CRIMINAL ACTION</p> <p style="text-align:center">No. 04-799</p>
--	--

MEMORANDUM & ORDER

Katz, S.J.

May 25, 2007

On September 24, 2004, Defendant Scott Marks was sentenced to time served followed by two years of supervised release for importing steroids.¹ Defendant additionally was ordered to observe all rules specified by the Probation Office and to follow the Special Conditions set forth at his sentencing. On April 13, 2005, after Defendant submitted two positive urine tests for cocaine and violated other terms of his supervised release, this court modified Defendant's supervised release by ordering Defendant to serve a term of four months at the community corrections center.² On October 26, 2005, after hearing evidence that Defendant had failed to successfully complete his placement at the community

¹ The Honorable Jeffrey Miller, United States District Judge for the Southern District of California, imposed this sentence. Effective December 16, 2004, the case was transferred to this court.

² On May 17, 2005, Defendant was placed at the Kintock Group Community Corrections Center in Philadelphia, Pennsylvania. On August 5, 2005, Defendant was terminated from this facility for failing to secure employment.

corrections center, had used alcohol and cocaine, and had failed to appear for urine tests and drug treatment sessions, the court continued Defendant's supervised release, subject to the filing of another petition for revocation, if necessary. Now before the court is a Petition for Revocation prepared by the Probation Office on July 26, 2006. Upon consideration of the submissions of the Government attorney and the Probation Office, and after a hearing, the court makes the following finds of fact and conclusions of law.

I. Findings of Fact

1. A general condition of Defendant's supervised release is that he not commit another federal, state or local crime.
2. On August 9, 2006, in the Bucks County Court of Common Pleas, Defendant pleaded guilty to three charges – two misdemeanor charges of driving under the influence of alcohol (in violation of 75 PA. C.S.A. § 3802(a)(1) and (c)) and one summary charge of careless driving (in violation of 75 PA. C.S.A. § 3714(a)) – and was sentenced to 1 to 6 months in prison.
3. A standard condition of Defendant's supervised release is that he report to his probation officer as directed by the court or the probation officer, and that he submit a truthful and complete written report within the first five (5) days of each month.

4. Defendant failed to show up for pre-arranged visits with his probation officer on April 4, June 27, and July 11, 2006.

5. Defendant failed to submit his required monthly reports for October, November, and December 2005.

6. A standard condition of Defendant's supervised release is that he notify his probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.

7. On both November 14, 2005 and March 22, 2006, Defendant was cited for disorderly conduct by the Lower Makefield Township Police Department. Defendant failed to notify his probation officer within 72 hours of being questioned by law enforcement with regard to each citation.

8. A special condition of Defendant's supervised release is that he participate in a program of mental health treatment as directed by his probation officer, and sign any releases necessary to permit his doctor to talk to his probation officer.

9. On May 7, May 18, June 6, and June 13, 2006, Defendant refused to sign release forms that were necessary for his probation officer to get an update on his progress in his mental health treatment program and address his future treatment needs.

II. Conclusions of Law

1. Supervised release is governed by the provisions of 18 U.S.C. § 3583. In determining the modification of supervised release, the court is to consider the factors set forth in 18 U.S.C. § 3553(a)(1). See 18 U.S.C. § 3583(e). These factors include the nature and circumstances of the offense, Defendant's history and characteristics, and the need for the sentence to punish, deter, incapacitate, and rehabilitate. See 18 U.S.C. § 3553(a). The court also should consider the types of sentences available, relevant sentencing policy statements, and the need to avoid sentencing disparities. See id.

2. If, after considering the foregoing factors, the court finds by a preponderance of the evidence that Defendant has committed the violations alleged, the court may alter the terms of supervised release. The court may release and discharge Defendant, revoke his supervised release, or order electronic monitoring. See 18 U.S.C. § 3583(e)(1)-(4).

3. Although the Sentencing Guidelines' provisions regarding revocation of supervised release are advisory rather than mandatory, as noted previously, these policy statements are one of the factors the court must consider in addressing any modification of supervised release. See United States v. Schwegel, 126 F.3d 551 (3d Cir. 1997) (holding that the Sentencing Guidelines'

supervised release provisions remained advisory after certain amendments to 18 U.S.C. § 3583).

4. The government has proven by a preponderance of the evidence that Defendant committed four Grade C violations of the conditions of his supervised release.³ See U.S.S.G. § 7B1.1(a)(3). Should the court choose to revoke Defendant's supervised release rather than modify its terms, the recommended range is five to eleven months imprisonment, as Defendant's criminal history category is III. See U.S.S.G. § 7B1.4(a). The statutory maximum term of imprisonment upon revocation is two years, as Defendant's original offense was a Class D felony. See 18 U.S.C. § 3583(e)(3).

5. Upon consideration of the factors set forth in 18 U.S.C. § 3553(a), the court will revoke Defendant's supervised release and impose a sentence of five months' imprisonment, to be served upon Defendant's completion of the term of imprisonment for his February 12, 2007 state law convictions for aggravated assault and driving under the influence. Defendant's repeated failure

³ These four Grade C violations are: (1) Defendant's commission of three state offenses, each punishable by a term of imprisonment of one year or less, see U.S.S.G. § 7B1.1(a)(3); 75 PA. C.S.A. §§ 3714, 3802, 3803; 18 PA. C.S.A. §§ 1104, 1105, (2) Defendant's failure to report to his probation officer as directed on three occasions, and to submit a truthful and complete written report within the first five days of each month, also on three occasions, (3) Defendant's failure to notify his probation officer, on two occasions, within 72 hours of being questioned by a law enforcement officer, and (4) Defendant's refusal, on four occasions, to sign release forms that were necessary to permit his doctor to talk to his probation officer about his mental health treatment.

to comply with the terms of his supervised release indicates that continued modification of those terms would be ineffective. The court therefore will not impose a term of supervised release following the conclusion of this sentence.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<p>UNITED STATES OF AMERICA,</p> <p style="text-align:center">v.</p> <p>SCOTT MARKS, Defendant.</p>	<p>CRIMINAL ACTION No. 04-799</p>
---	---

ORDER

AND NOW, this 25th day of May, 2007, upon consideration of the Petition for Revocation of Supervised Release, the Government's Revised Proposed Findings of Fact and Conclusions of Law, and after a hearing, it is hereby **ORDERED** that the Petition is **GRANTED** as follows:

1. Defendant's supervised release is **REVOKED**;
2. Upon Defendant's completion of the term of imprisonment for his February 12, 2007 state law convictions for aggravated assault and driving under the influence, Defendant shall be committed to the custody of the United States Bureau of Prisons for a term of five (5) months; and
3. There shall be no further supervised release after Defendant's release from imprisonment.

BY THE COURT:

/s/ **Marvin Katz**

MARVIN KATZ, S.J.