

**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>JAMES PREVARD, Defendant</p>	<p style="text-align:center">CRIMINAL ACTION No. 92-2, 92-63</p>
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FINDINGS OF FACT AND CONCLUSIONS OF LAW

KATZ, S.J.

May 6, 1999

Following his plea of guilty to bank robbery, on May 20, 1992 this court sentenced James Prevard to 70 months imprisonment followed by 3 years supervised release. Mr. Prevard was released from prison and began his term of supervised release on March 3, 1997.

In this petition to revoke defendant's supervised release, Probation cites four violations of Mr. Prevard's release conditions: he failed to report at his weekly appointment several weeks from November 1998 to January 1999, he tested positive for opiates and admitted heroin use in November 1998, he failed to complete his 90-day halfway house placement, and he has failed to make payments on his restitution, which has an outstanding balance of \$860. After a hearing, and upon consideration of all the evidence of record, the court makes the following findings of fact and conclusions of law.

Findings of Fact

1. The defendant's conditions of supervised release include that he shall complete a 90-day placement in a halfway house and participate in outpatient drug abuse treatment while there¹; he

¹Originally, he was required to participate in a drug treatment program, including drug testing. In July 1998, the court modified the conditions of Mr. Prevard's supervised release to require him to complete a 90-day placement in a halfway house, Kintock Sanction Center, and

(continued...)

shall report to the probation officer as directed; he shall pay \$890 restitution; and he shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance. See Judgment at 3; Order of July 2, 1998.

2. A urine specimen taken from defendant on November 9, 1998 tested positive for opiates. On November 17, during a home visit, defendant admitted he had used heroin since his discharge from Kintock at the end of October. He also acknowledged on his November written monthly report that he had used or possessed heroin. A urine specimen taken on December 18, 1998 also tested positive for opiates. On December 30, during an office visit, defendant again admitted that he had used heroin and acknowledged that the December 18 specimen was positive.

3. Based on those test results and on Mr. Prevard's admissions of drug use, the court finds that he possessed heroin. See United States v. Blackston, 940 F.2d 877, 878-79 (3d Cir. 1991) (ruling that a court may base a finding of possession on evidence of use, though such a finding is not required).

4. Defendant did not complete his 90-day program at Kintock. He entered on August 14, 1998, and he was expelled on October 26 because he left for the weekend after his usual weekend pass was denied.

5. Defendant failed to report to his probation officer as directed. At an office visit on November 18, 1998 he was instructed to report every Wednesday. He failed to report on the

¹(...continued)

to participate in outpatient drug treatment while there. In early 1998, Mr. Prevard had participated, at Probation's direction, in an outpatient program that he attended twice a week. He successfully completed a five-day detoxification program. He was then placed in Girard Medical Center for a 90-day residence treatment program. After one month there, he left the program, explaining that he had a dispute with another resident and believed it would escalate to a fight if he did not leave. It was at that point that the probation officer petitioned the court to require defendant's halfway house placement, and the court so ordered.

following dates: November 25, December 9, December 23, January 6, January 13, January 20, and January 27.

6. Mr. Prevard has not made the agreed-upon payments of \$30 per month on his restitution. That payment plan was agreed upon by him and his probation officer at the beginning of his period of supervision as what he could pay given his minimum-wage job. On February 4, 1999 defendant admitted that he was not paying his restitution because he was using his money to buy heroin. To date, defendant has made only one payment, leaving a balance of \$860.

Conclusions of Law

7. 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 factors including the nature and circumstances of the offense; the history and characteristics of the defendant; and the need for the sentence to provide just punishment, deter, protect the public, and assist the defendant. See 18 U.S.C. § 3583(a), (e). Additional factors include the types of sentence available, relevant policy statements, and the need to avoid sentencing disparities. See id.

8. After considering the foregoing factors, the court may modify supervised release in a variety of ways, including terminating supervised release and discharging the defendant; revoking supervised release; or ordering electronic monitoring. See 18 U.S.C. 3583(e)(1)-(4).

9. Because the defendant's offense of conviction was a Class C felony, he may be required to serve a maximum of 2 years in prison if his revocation is revoked. See 18 U.S.C. § 3583(e)(3).

10. The Sentencing Guidelines' treatment of revocation of supervised release is advisory rather than mandatory, although, as noted previously, these policy statements are one of the factors

the court shall consider in addressing modification of supervised release. See United States v. Schwegel, 126 F.3d 551 (3d Cir. 1997).

11. The defendant committed four Grade C violations. See U.S.S.G. § 7B1.1(a)(3).

“Where there is more than one violation of the conditions of supervision, . . . the grade of the violation is determined by the violation having the most serious grade.” U.S.S.G. § 7B1.1(b).

12. Upon a finding of a Grade C violation, the court may revoke supervised release and sentence the defendant to a term of imprisonment. See U.S.S.G. § 7B1.3(a)(2). For a Grade C violation where the defendant has a criminal history category of I, the Guidelines range of imprisonment is 3 to 9 months. See U.S.S.G. § 7B1.4(a).

13. Considering the nature and circumstances of the offenses; the history and characteristics of the defendant; and the need for the sentence to provide just punishment, deter, protect the public, and assist the defendant, the court finds that a revocation of Mr. Prevard’s supervised release and a sentence of six months imprisonment is appropriate.

An appropriate Order follows.

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ORDER

AND NOW, this 6th day of May, 2003, upon consideration of the probation office's petition, after a hearing pursuant to Fed. R. Crim. P. 32.1, and based upon the court's findings of fact and conclusions of law, it is hereby **ORDERED** that the petition is **GRANTED** as follows:

1. the Defendant's supervised release is **REVOKED** effective on the date of his surrender under this Order;
2. the Defendant is committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of six (6) months; and
3. the Defendant shall surrender to the United States Marshal of this district before 2:00 p.m. on May 20, 1999.

BY THE COURT:

MARVIN KATZ, S.J.