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878 F.3d 111
United States Court of Appeals,
Fourth Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Marcus L. HARRIS, Defendant-Appellant.

No. 16-4546
|
Argued: September 15, 2017
|
Decided: December 19, 2017

Synopsis

Background: After defendant pleaded guilty to a federal cocaine offense and was sentenced to a prison term and a term of supervised release, his original term of supervised release was revoked for a technical violation, and a second term of supervised release was imposed. Upon defendant's conviction for possession of a firearm by a convicted felon, the United States District Court for the Eastern District of Virginia, No. 3:08-cr-00401-REP-1, Robert E. Payne, Senior District Judge, 2016 WL 3922050, revoked defendant's supervised release again and imposed a second revocation sentence, consisting of 36 months of imprisonment and 24 months of supervised release. Defendant appealed.

Holdings: The Court of Appeals, Floyd, Circuit Judge, held that:

[1] district court retained jurisdiction to adjudicate the violations of defendant's supervised release alleged in fourth addendum to petition to revoke, and

[2] district court properly imposed a sentence within the statutory maximum, on second revocation of defendant's supervised release.

Affirmed.

West Headnotes (15)

[1] Criminal Law
Review De Novo

The Court of Appeals reviews de novo whether the district court had jurisdiction to rule upon alleged violations of supervised release.

Cases that cite this headnote

[2] Sentencing and Punishment
Discharge of probationer

A revocation does not end a term of supervised release.

Cases that cite this headnote

[3] Sentencing and Punishment
Discharge of probationer

When the district court terminates a term of supervised release, the defendant is discharged from the court's supervision. 18 U.S.C.A. § 3583(e).

Cases that cite this headnote

[4] Sentencing and Punishment
Discharge of probationer

Termination ends a term of supervised release without the possibility of its reimposition or continuation at a later time; thus, if the district court later discovered that the defendant had earlier violated some condition of his supervised release, the court would lack authority to send him back to prison for that violation qua violation. 18 U.S.C.A. § 3583(e).

Cases that cite this headnote

[5] Sentencing and Punishment
Discharge of probationer

When the court revokes a term of supervised release, the defendant is not discharged from

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the court's supervision. 18 U.S.C.A. §§ 3583(e)(3), 3583(h).

Cases that cite this headnote

[6] **Sentencing and Punishment**
Disposition of Offender

After revocation of probation, the defendant continues to serve his term of supervised release, but does so in prison; revocation merely recalls, calls, or summons back the release. 18 U.S.C.A. § 3583(e)(3).

Cases that cite this headnote

[7] **Sentencing and Punishment**
Discharge of probationer

Sentencing and Punishment
Disposition of Offender

Unlike termination, revocation does not end the term of supervised release; instead, the term of supervised release continues on past revocation. 18 U.S.C.A. § 3583(e).

Cases that cite this headnote

[8] **Sentencing and Punishment**
Time for proceedings

It is the timing of the petition to revoke supervised release relative to the expiration of supervised release that matters, when determining whether the district court retains jurisdiction. 18 U.S.C.A. § 3583(e).

Cases that cite this headnote

[9] **Sentencing and Punishment**
Time for proceedings

Sentencing and Punishment
Complaint or petition

District court retained jurisdiction to adjudicate the violations of defendant's supervised release alleged in fourth addendum to petition to revoke; first revocation of defendant's supervised release did not end his supervised release, and government filed fourth addendum during defendant's post-revocation prison term, so supervised release remained in effect at that time, and eliminating the court's ability to punish defendants for more serious violations that it was not aware of at the time of revocation would create a powerful incentive for defendants to readily admit to lesser violations to obtain more lenient sentencings while hiding a more serious violation from the court. 18 U.S.C.A. § 3583(e).

Cases that cite this headnote

[10] **Sentencing and Punishment**
Discharge of probationer

Sentencing and Punishment
Disposition of Offender

Defendant was on supervised release while he was imprisoned for 30 days, as post-revocation prison term; the imprisonment was itself a part of his supervised release, and thus, the post-revocation prison term was not in connection with a conviction for a federal, state, or local crime. 18 U.S.C.A. §§ 3583(e)(3), 3624(e).

Cases that cite this headnote

[11] **Sentencing and Punishment**
Nature and purpose of probation

The key to the supervisory release scheme is the district court's broad authority to protect the public, and its ability to police violations of the release's conditions. 18 U.S.C.A. § 3583.

Cases that cite this headnote

[12] **Sentencing and Punishment**
Credits and computation thereof

The district court is not required to credit time previously served on post-release supervision. 18 U.S.C.A. § 3583(e)(3).

Cases that cite this headnote

[13] **Sentencing and Punishment**
Imposition of new sentence

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Phrase "on any such revocation" in statute governing inclusion of a term of supervised release after imprisonment, permits the district court to start anew with the statutory maximum without aggregating any post-revocation imprisonment. 18 U.S.C.A. § 3583(e)(3).

Cases that cite this headnote

[14] Sentencing and Punishment
Sentence within statutory or other limitation for offense of conviction

District court properly imposed a sentence within the statutory maximum, on second revocation of defendant's supervised release; district court was not required to aggregate the revocation sentences, but was allowed to start anew with the maximum on any such revocation, and district court expressly stated that it was revoking the period of supervised release on which defendant was currently serving, i.e., his second term of supervised release. 18 U.S.C.A. § 3583(e)(3).

Cases that cite this headnote

[15] Sentencing and Punishment
Discharge of probationer

Sentencing and Punishment
Disposition of Offender

Although it is true that one term of supervised release continues past revocation, the language of statute governing modification of conditions or revocation assumes that supervised release can be revoked multiple times as long as the defendant continues to violate the release conditions. 18 U.S.C.A. § 3583(e)(3).

Cases that cite this headnote

***113** Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, Senior District Judge. (3:08-cr-00401-REP-1)

Attorneys and Law Firms

ARGUED: Laura Jill Koenig, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Richmond, Virginia, for Appellant. Brian R. Hood, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee. ON BRIEF: Geremy C. Kamens, Federal Public Defender, Patrick L. Bryant, Appellate Attorney, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Alexandria, Virginia, for Appellant. Dana J. Boente, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Before SHEDD, AGEE, and FLOYD, Circuit Judges.

Opinion

Affirmed by published opinion. Judge Floyd wrote the opinion in which Judge Shedd and Judge Agee joined.

FLOYD, Circuit Judge:

Appellant Marcus L. Harris appeals the revocation of his supervised release. The district court revoked his original term of supervised release for a technical violation, and imposed a second term of supervised release. Soon after, the court revoked Harris's second term of supervised release for a substantive violation. Harris argues that the district court lacked jurisdiction to revoke his second term of supervised release. Assuming the court had jurisdiction, Harris further argues that the revocation sentence exceeded the statutory maximum. Because the district court retained jurisdiction to revoke Harris's supervised release a second time, and properly prescribed the maximum sentence permitted under 18 U.S.C. § 3583(e)(3), we affirm.

I.

In 2009, Harris pled guilty to Possession with Intent to Distribute 5 Grams or More of Cocaine Base, a Class B felony under 21 U.S.C. § 841. The district court sentenced Harris to a term of imprisonment and 48 months of supervised release ("original ***114** term"). Harris began his original term of supervised release on September 8, 2014. The conditions of the release specified that Harris "shall not commit another federal, state or local crime,"

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and "shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer...." J.A. 20.

In July 2015, Harris was involved in a traffic stop by the Petersburg Bureau of Police ("PBP"), which led to the discovery of firearms and substances suspected to be drugs, and the execution of two search warrants at his home. Harris failed to report the PBP officers' questioning in connection with the search warrants to his probation officer, but the probation officer eventually learned of the encounter. As a result, on September 3, 2015, the government filed a petition ("original petition") in federal court seeking to revoke Harris's original term of supervised release for two alleged violations: (1) commission of a crime—Possession of a Firearm by a Convicted Felon and (2) commission of a crime—Possession of Controlled Substance.

While the original petition was pending, on September 24, 2015, Harris was separately arrested by the PBP and charged in state court with murder and use of a firearm in the commission of a felony. The government subsequently filed three addenda to the original petition, indicating that the state investigation of the murder charge was connected to the July traffic stop involving the drugs and firearms. The first addendum alleged that Harris failed to notify his probation officer within 72 hours of questioning by law enforcement, referencing the PBP's execution of the search warrants. The second addendum alleged Harris's two new state criminal charges as the basis for revocation. The third addendum requested that the district court issue an arrest warrant based on the second addendum's allegations. The district court approved the government's request to amend the original petition through these addenda and issued an arrest warrant.

The district court held a revocation hearing on October 6, 2015. The court revoked Harris's original term of supervised release for his failure to report, as alleged in the first addendum, and imposed the first revocation sentence. This sentence consisted of one month of imprisonment (from October 6, 2015, to November 5, 2015) and 40 months of supervised release. Given the pending state court proceedings, the district court neither dismissed nor ruled on the allegations regarding the violations based on the state criminal charges.

While Harris was serving his one month imprisonment, a federal grand jury indicted Harris for Possession of a Firearm by a Convicted Felon for the firearms discovered during the July 2015 traffic stop. Based on this federal indictment, the government filed a fourth addendum to the original petition, alleging the commission of this crime as a new basis for revoking Harris's supervised release. On October 23, 2015, the district court approved the fourth addendum and issued an arrest warrant on the basis of these allegations. The district court also granted the government's motion to dismiss the original petition and other addenda, allowing the fourth addendum to supersede other allegations. Harris remained in pre-trial detention pending his federal criminal trial, even after he completed his one-month, post-revocation imprisonment.

On April 6, 2016, Harris was convicted of Possession of a Firearm by a Convicted Felon. Based on this conviction, on August 18, 2016, the district court revoked Harris's supervised release again and imposed a second revocation sentence, consisting of ***115** 36 months of imprisonment and 24 months of supervised release. Harris appeals this second revocation of his supervised release. Harris claims that the district court lacked jurisdiction to revoke his supervised release, and that even if it had jurisdiction, the court exceeded the statutory maximum for a revocation sentence under 18 U.S.C. § 3583.

II.

[1] We first consider whether the district court had jurisdiction to revoke Harris's supervised release a second time. This Court reviews de novo whether the district court had jurisdiction to rule upon alleged violations of supervised release. *United States v. Barton*, 26 F.3d 490, 491 (4th Cir. 1994). We hold that the district court had jurisdiction to revoke Harris's supervised release a second time.

A.

[2] **[3]** **[4]** It is well-established that a revocation does not end a term of supervised release. 18 U.S.C. § 3583 governs the district court's authority to revoke, extend, modify, or terminate a defendant's term of supervised release. Under 18 U.S.C. § 3583(e), the court may

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> (1) terminate a term of supervised release and discharge the defendant released ...;
>
> (2) extend a term of supervised release ... at any time prior to the expiration or termination of the term of supervised release ...;
>
> (3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release....

18 U.S.C. § 3583(e)(1)–(3). When the district court terminates a term of supervised release, the defendant is discharged from the court's supervision. Termination "end[s] the term of supervised release without the possibility of its reimposition or continuation at a later time." *Johnson v. United States*, 529 U.S. 694, 704, 120 S.Ct. 1795, 146 L.Ed.2d 727 (2000). "Thus, if the district court later discovered that the defendant had earlier violated some condition of his supervised release, the court would lack authority to send him back to prison for that violation *qua* violation." *United States v. Cross*, 846 F.3d 188, 190 (6th Cir. 2017).

[5] **[6]** **[7]** By contrast, when the court revokes a term of supervised release, the defendant is not discharged from the court's supervision. The court may "require the defendant to serve in prison all or part of the term of supervised release...." 18 U.S.C. § 3583(e)(3); *see also* 18 U.S.C. § 3583(h) (allowing the court to include a post-revocation term of supervised release to follow the post-revocation imprisonment as part of a revocation sentence). After revocation, the defendant continues to serve his term of supervised release, but does so in prison. Revocation merely " 'recall[s],' 'call[s] or summon[s] back' the release." *United States v. Winfield*, 665 F.3d 107, 110 (4th Cir. 2012) (quoting *Johnson*, 529 U.S. at 706, 120 S.Ct. 1795) (alterations in original); *see also Cross*, 846 F.3d at 190 ("Revocation therefore revokes only the release part of supervised release...."). Unlike termination, revocation does not end the term of supervised release; instead, the term of supervised release continues on past revocation. ***116** *Johnson* 529 U.S. at 705, 120 S.Ct. 1795 ("[I]f 'the term of supervised release' is being served, in whole or part, in prison, then something about the term of supervised release survives the preceding order of revocation.").

Based on *Johnson*'s holding that a term of supervised release survives past a revocation, we similarly held in *Winfield* that the district court's jurisdiction over the supervised release continues past revocation. 665 F.3d at 112. In *Winfield,* the district court revoked Winfield's release based on technical violations and sentenced Winfield to 12 months of imprisonment. *Id.* at 109. The court, however, postponed adjudicating the substantive violations pending a state criminal trial. *Id.* When the court held a second revocation hearing, Winfield argued that the first revocation had deprived the district court of its jurisdiction. *Id.* at 110. We looked to the Supreme Court's reasoning in *Johnson*, and the Third Circuit's determination in a similar case that the first revocation "did not deprive the court of its jurisdiction to hold a second violation hearing and impose additional prison time for violations committed prior to the revocation of the release." *Id.* at 111 (citing *United States v. Johnson*, 243 Fed.Appx. 666, 668 (3d Cir. 2007)). In upholding Winfield's second revocation sentence, we applied the Third Circuit's reasoning that if "a revoked term of supervised release continues to have some effect post-revocation," then the district court's supervisory authority continues as well. *Id.* Our holding in *Winfield* informs our decision today.

B.

The main thrust of Harris's argument is based on the timing of the government's petitions. In Harris's view, *Winfield* controls only when the government files all operative petitions before the first revocation. [1] Based on this reading of *Winfield*, Harris argues that *Winfield* does not control this case because the government filed the fourth addendum-which served as the basis for his second revocation sentence-after the first revocation. We reject this argument for three reasons.

First, Harris's argument is premised on a definition of "revoke" that the Supreme Court and this Court have rejected. Relying on a pre-*Johnson* case from a sister circuit, Harris asserts that "[o]nce a term of supervised

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release has been revoked under § 3583(e)(3), there is nothing left to extend, modify, reduce, or enlarge under § 3583(e)(2). The term of release no longer exists." *United States v. Holmes*, 954 F.2d 270, 272 (5th Cir. 1992), *abrogated by Johnson*, 529 U.S. 694, 120 S.Ct. 1795. In Harris's view, because the supervised release term ceases to exist after revocation, the government brings its additional charges too late if it brings them after revocation. This definition of "revoke" directly contradicts the Supreme Court's explanation in *Johnson* that a supervised release term continues to exist after revocation, and our application of that definition in *Winfield*.[2] We decline to return to a pre-*Johnson* definition of "revoke."

[8] ***117** Second, our decision in *Winfield* did not rest on the fact that the government filed all of its petitions before the first revocation. Here, as Harris points out, the government filed the fourth addendum after the first revocation, whereas in *Winfield*, the government filed all petitions before the first revocation. Harris's reliance on the timing of the petition relative to the first revocation is misplaced. Our holding in *Winfield* did not turn on the fact that the government filed its petitions before the first revocation. Instead, we held that the court maintained jurisdiction because the government filed the petition before Winfield's *supervised release* expired. 665 F.3d at 112. It is the timing of the petition relative to the expiration of supervised release that matters. *See id.* ("[A] district court is within its authority to hold bifurcated violation hearings based on a petition filed before the supervised release's expiration...."); *see also Cross*, 846 F.3d at 190 ("[T]he district court's supervisory authority continues until the defendant's supervised release terminates or expires.").

[9] **[10]** Here, the government filed the fourth addendum during Harris's one-month, post-revocation prison term. Based on our holding in *Winfield*, the first revocation did not end Harris's supervised release. Moreover, the government filed the fourth addendum during Harris's post-revocation prison term, requiring us to find that the government filed the fourth addendum while Harris's supervised release remained in effect.[3] Therefore, the government satisfied the timing requirement of filing the petition before the expiration of Harris's supervised release, and the district court retained jurisdiction to adjudicate the violations alleged in the fourth addendum.

[11] Lastly, limiting the district court's supervisory authority, as Harris suggests, would eviscerate Congress's purpose in designing the current supervisory release scheme. Congress entrusted the district court with the discretion and authority to supervise defendants. *See generally* 18 U.S.C. § 3583. We have observed that this "unique method of post-confinement supervision ... fulfills rehabilitative ends," and "[t]he congressional policy ... to improve the odds of a successful transition from the prison to liberty...." *United States v. Buchanan*, 638 F.3d 448, 450 (4th Cir. 2011) (internal quotation marks and citations omitted). The key to this scheme is the district court's "broad authority to protect ***118** the public," *United States v. Wing*, 682 F.3d 861, 878 (9th Cir. 2012) (Tallman, J., dissenting) (internal quotation marks and citation omitted), and its "ability to police violations of the release's conditions," *Cross*, 846 F.3d at 190. Under Harris's theory, the court would be powerless to act upon a newly discovered or alleged violation if the government does not file a petition before the court revokes the defendant's supervised release. This creates a powerful incentive for defendants to "readily admit to lesser violations to obtain more lenient sentencings" while hiding a more serious violation from the court. *United States v. Vázquez-À lvarez*, No. 12-286 (GAG), 2015 WL 5090113, at *4 (D.P.R. Aug. 24, 2015). We decline to "eliminate[ ] the court's ability to punish defendants for more serious violations that it was not aware of at the time of revocation...." *Id.*

The first revocation ended neither Harris's supervised release nor the district court's jurisdiction, and the government filed the fourth addendum while Harris was serving his post-revocation imprisonment. Therefore, we hold that the district court had jurisdiction to revoke Harris's second term of supervised release.

III.

We now consider whether the district court properly imposed a sentence within the maximum permitted under 18 U.S.C. § 3583(e). We hold that it did.

A.

Under 18 U.S.C. § 3583(b)(1), the statutory maximum for a term of supervised release for a Class B felony is 60

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months. If the district court revokes the term of supervised release, it may "require the defendant to serve in prison all or part of the term of supervised release ... without credit for time previously served on postrelease supervision...." 18 U.S.C. § 3583(e)(3). Of those 60 months, however, a defendant "may not be required to serve on any such revocation ... more than 3 years in prison...." *Id.* 18 U.S.C. § 3583(h) provides that "the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment," but that term of supervised release "shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release."

Harris's original term of supervised release was for 48 months. After the first revocation, the district court imposed the first revocation sentence, consisting of one month of imprisonment and 40 months of supervised release. The first revocation sentence, then, was well within the maximum of 36 months for the total period of imprisonment, and the maximum of 60 months for the total period of supervised release for a Class B Felony. *See* 18 U.S.C. § 3583(b)(1), (e)(3). After the second revocation, the district court imposed the second revocation sentence, consisting of 36 months of imprisonment and 24 months of supervised release. Standing alone, the second revocation sentence reached the maximum sentence of 60 total months, including the maximum of 36 months of imprisonment. 18 U.S.C. § 3583(b)(1), (e)(3).

[12] In arguing that the district court exceeded the statutory maximum for a Class B Felony, Harris erroneously aggregates the first and second revocation sentences. Harris contends, "the district court imposed 37 months of imprisonment and 64 months of supervised release upon revoking a single supervised release term." Appellant Br. 23. 18 U.S.C. § 3583(e)(3) does not require the district court to credit ***119** time previously served on post-release supervision. The district court could sentence Harris up to 60 months of supervised release upon his second revocation without giving credit for any of the time that he had already served.

[13] Similarly, 18 U.S.C. § 3583(e)(3) establishes that "on any such revocation" the district court may order the defendant to serve up to 36 months in prison for a Class B felony. Before 2003, the relevant portion of 18 U.S.C. § 3583(e)(3) did not include the phrase "on any such revocation," and courts generally aggregated all post-revocation imprisonment. *See* Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, § 101(1), 117 Stat. 650, 651 (2003); *United States v. Perry*, 743 F.3d 238, 241–42 (7th Cir. 2014). Post-amendment, however, we agree with the government that the phrase "on any such revocation" permits the district court to start anew with the statutory maximum without aggregating any post-revocation imprisonment.

Every sister circuit that has examined this amendment has concluded the same. *See, e.g., United States v. Cunningham*, 800 F.3d 1290, 1292–93 (11th Cir. 2015) (recognizing the amendment abrogated the cases that called for aggregation of sentences); *Perry*, 743 F.3d at 242 (holding that "prior time served for violations of supervised release is not credited towards and so does not limit the statutory maximum that a court may impose for subsequent violations of supervised release ..."); *United States v. Spencer*, 720 F.3d 363, 368 (D.C. Cir. 2013) (concluding that the amendment "results in the felony class imprisonment terms at the end of § 3583(e)(3) being per-revocation limits, and not aggregate limits"); *United States v. Williams*, 675 F.3d 275, 280–81 (3d Cir. 2012) (noting that "Congress did not intend to set an aggregate cap on successive revocation imprisonment"); *United States v. Shabazz*, 633 F.3d 342, 346 (5th Cir. 2011) ("If Congress had intended for courts to continue reading the language at the end of § 3583(e)(3) as an aggregate limit on revocation imprisonment it would have left ... § 3583(e)(3) unaltered."); *United States v. Epstein*, 620 F.3d 76, 80 (2d Cir. 2010) (holding that § 3583(e)(3) applies to each discrete revocation, "irrespective of any time served for previous violations"); *United States v. Knight*, 580 F.3d 933, 937 (9th Cir. 2009) (stating that courts are not required to aggregate revocation sentences under the 2003 amendment); *United States v. Lewis*, 519 F.3d 822, 824–25 (8th Cir. 2008) (same); *United States v. Tapia-Escalera*, 356 F.3d 181, 188 (1st Cir. 2004) (noting that, through the 2003 amendment, "Congress has altered the statute to adopt the government's position" that the terms of imprisonment do not aggregate (emphasis omitted)).

In unpublished opinions, we have also concurred with our sister circuits. *United States v. Ware*, 639 Fed.Appx. 919, 920 (4th Cir. 2016); *United States v. Rucker*, 578

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Fed.Appx. 291, 292 (4th Cir. 2014) (Mem.). We see no reason to now hold otherwise.

B.

[14] Harris recognizes that the plain language of the statutory provisions stands against him. However, he argues that if the district court retained jurisdiction over the second revocation because the original term continued to remain in effect, then the court effectively revoked the same term of supervised release twice, requiring the court to consider the first and second revocation sentences in the aggregate. Harris's argument that the district court imposed additional punishment for his already-revoked, ***120** original term is contrary to the record. At the second revocation, the district court expressly stated that it was revoking "the period of supervised release on which the defendant is currently serving"—Harris's second term of supervised release. J.A. 311.

[15] Moreover, although it is true that one term of supervised release continues past revocation, *see Johnson*, 529 U.S. at 705–06, 120 S.Ct. 1795, the language of 18 U.S.C. § 3583(e)(3) assumes that supervised release can be revoked multiple times as long as the defendant continues to violate the release conditions. Harris's theory would convert per-*revocation* maximums into per-*term of supervised release* maximums. This is contrary to Congress's intent to create a per-revocation maximum.

Because 18 U.S.C. § 3583(e)(3) does not require the district court to aggregate the revocation sentences, but allows the court to start anew with the maximum "on any such revocation," the district court properly imposed a sentence within the statutory maximum. Therefore, we see no error.

IV.

We hold that the district court retained jurisdiction over Harris's supervised release and properly sentenced Harris within the statutory maximum. Accordingly, the judgment of the district court is

AFFIRMED.

All Citations

878 F.3d 111

Footnotes

1 Harris believes that "*Winfield* was wrongly decided and should be reconsidered." Appellant Br. 20. We disagree.

2 Harris finds support in the Ninth Circuit's decision in *United States v. Wing*, 682 F.3d 861, 868 (9th Cir. 2012). In *Wing*, the court concluded that "the Supreme Court's application of the 'unconventional' definition of 'revoke' [in *Johnson*] was based on the language of subsection (e)(3) before the 1994 amendments." The Ninth Circuit insisted that the Supreme Court's interpretation of "revoke" in *Johnson* did not apply to the newly amended statute. Instead, the court adopted an ordinary meaning of "revoke"—"to void or annul by recalling, withdrawing, or reversing." *Id.* (citation omitted). Accordingly, the court held that a term of supervised release could not be revoked based on a violation of a condition of a previously revoked term of supervised release. *Id.* at 863.

Because *Winfield* remains binding precedent of this Court, we cannot adopt a contrary definition of "revoke." In our view, even considering the post-*Johnson* amendments to § 3583(e)(3), *Johnson* and *Winfield* are still good law. *See Wing*, 682 F.3d at 877 (Tallman, J., dissenting) ("Congress has amended § 3583 seven different times without altering any of the relevant terms interpreted in [*Johnson*]."). Section 3583(e)(3) "says now, just as it did then, that revocation means the defendant must 'serve in prison all or part of the term of supervised release.' " *Cross*, 846 F.3d at 190.

3 Harris raises an alternative argument that he was not on supervised release while he was imprisoned for 30 days from October 6, 2015, to November 5, 2015. Under 18 U.S.C. § 3624(e), "[a] term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days." We reject his argument because, as explained above, the post-revocation prison term was itself a part of Harris's supervised release, *see, e.g.*, 18 U.S.C. § 3583(e)(3); *Johnson* 529 U.S. at 705–06, 120 S.Ct. 1795, and therefore Harris's post-revocation prison term was not "in connection with a conviction for a Federal, State, or local crime," 18 U.S.C. § 3624(e).

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E.D. Virginia,
Richmond Division.

United States of America,
v.
Marcus L. Harris, Defendant.

Criminal Action No. 3:08cr401
|
Signed 07/20/2016

Attorneys and Law Firms

Roderick C. Young, Stephen Wiley Miller, Office of the U.S. Attorney, Richmond, VA, for Plaintiff.

Amy Leigh Austin, The Law Office of Amy L. Austin, Richmond, VA, for Defendant.

Opinion

MEMORANDUM OPINION

Robert E. Payne, Senior United States District Judge

***1** This matter is before the Court on Defendant Marcus L. Harris's MOTION TO DISMISS SUPERVISED RELEASE VIOLATION PETITION FOR LACK OF JURISDICTION (ECF No. 119). For the reasons set forth below, Defendant Marcus L. Harris's MOTION TO DISMISS SUPERVISED RELEASE VIOLATION PETITION FOR LACK OF JURISDICTION (ECF No. 119) will be denied.

PROCEDURAL HISTORY

In 2010, Marcus L. Harris ("Harris") was sentenced to 96 months incarceration and four years of supervised release for possession with intent to distribute crack cocaine. (ECF No. 28). That sentence was subsequently reduced. (Order, ECF No. 45) Thereafter, Harris was released from incarceration and began supervised release in 2014. The timeline of relevant events begins in September 2015:

(1) In September 2015, Harris was arrested on a cluster of offenses: possession of a firearm by a convicted felon and possession with intent to distribute crack cocaine ("the September 2015 guns-and-drugs allegations").

(2) Later in September 2015, Harris failed to inform his probation officer that he had follow-up contact with state law enforcement in connection with the September 2015 guns-and-drugs allegations.

(3) On October 6, the Court revoked Harris's supervised release based on the failure-to-inform, and sentenced him to incarceration from October 6, 2015 to November 5, 2015. (ECF Nos. 77, 91).

(4) On October 23, 2015, the probation officer filed an addendum to the petition on supervised release based on the mandatory condition not to commit a further crime. (ECF No. 100).

(5) In April 2015, Harris was tried on the September 2015 guns-and-drugs allegations, and was convicted on a single count of being a felon in possession of a firearm. (Case No. 3:15CR170). Harris was sentenced to 120 months on that count on June 23, 2016.

Before Harris was sentenced in 3:15CR170, Harris filed this motion.

Harris begins the motion by acknowledging that United States v. Winfield, 665 F.3d 107 (4th Cir.2012) "governs this Court's analysis of this motion." (Def.'s Mtn. to Dismiss Supervised Release Violation Petition for Lack of Jurisdiction, ECF No. 119, 3) ("Def.'s Mtn."). Winfield held that a prior revocation on minor or technical violations does not prevent a second revocation on more significant or substantive violations. Id. at 109–10. Harris argues that Winfield was "incorrectly decided" and must be overturned on the basis of a Ninth Circuit decision, United States v. Wing, 682 F.3d 861 (9th Cir.2012). (Def.'s Mtn. 3, 5).

I. FOURTH CIRCUIT PRECEDENT TEACHES THAT THIS COURT HAS JURISDICTION

A. Winfield Teaches that "Revocation" does not Actually Terminate Supervised Release

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In 2000, the Supreme Court concluded that revoking a term of supervised release does not terminate that term of supervised release.[1] Johnson v. United States, 529 U.S. 694, 706–07 (2000) ("If 'the term of supervised release' is being served, in whole or part, in prison, then something about the term of supervised release survives the preceding order of revocation."). Relying on Johnson, the Fourth Circuit concluded that "a revocation of a term of supervised release is not equivalent to a termination of the release, and thus the revoked term remains in effect." Winfield, 665 F.3d at 112.

B. Brown Teaches that A Violation Sentence is Part of the Term of Supervised Release for which the Violation Sentence was Imposed

***2** Winfield's holding was recently reaffirmed in United States v. Brown, No. 15–4256, 2016 WL 3182700 (4th Cir. Jun. 8, 2016) (not selected for publication). In Brown, the timeline was as follows:

(1) In November 2013, the district court revoked supervised release on technical grounds "and imposed a sentence of seven months' imprisonment, to be followed by a new twelve month term of supervised release."

(2) Sometime between November 2013 and June 2014, defendant was indicted on state drug charges based on conduct which occurred in September or October 2013.

(3) In June 2014, defendant completed his federal sentence, but was held on detainer on the state drug charges.

(4) In November 2014, defendant pled guilty on the state charges.

(5) In November 2014, defendant's probation officer asked the district court to revoke defendant's supervised release again on the basis of the November 2014 state drug conviction.

Brown, 2016 WL 3182700, at *1. At a hearing on that November 2014 petition, the

> district court held a revocation hearing, in which the government clarified that it did not seek revocation of the second supervised-release term, but rather wanted the court to impose additional prison time for the more serious violations committed during the original release term. The district court agreed and concluded that it had jurisdiction under United States v. Winfield, 665 F.3d 107 (4th Cir.2012), to again revoke Brown's original supervised release.

Id.[2] (emphasis added).

The Fourth Circuit vacated the district court's decision, noting that the district court's decision was understandable in light of Winfield, but that it had failed to take into account "the newly imposed period of supervised release – a circumstance not present in Winfield," which altered the analysis. Id. at *3.

> Had Brown been released—rather than detained—in June 2014, his new twelve-month term of supervised release would have begun, and the district court would have improperly revoked that release term in April 2015. Thus, when a revocation sentence is to be followed by a new, separate term of supervised release, we see no meaningful distinction between the defendant's completion of the revocation sentence and subsequent, unrelated pre-trial detainment. The pre-trial detainment's legal significance operates on the new term of supervised release (so as to toll it) and has nothing to do with the completed revocation sentence– or, therefore, the original supervised-release term.
>
> Accordingly, Brown's original term of supervised release expired in June 2014 when he completed his revocation sentence, making the probation officer's November 2014 petition to revoke the original release term fall after that term's expiration. As a result, the district court did not have jurisdiction in April 2015, on the basis of a November 2014 revocation petition, to revoke Brown's original term of supervised release and impose a new revocation sentence.

***3** Id. at *3. Brown distinguishes itself from, but does not otherwise disparage, Winfield. In doing so, the Fourth Circuit explained that a revocation sentence is part of the period of supervised release for which the revocation sentence was imposed.

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The timing differences between this case and Brown require that the Court reach a result opposite to that reached by the Court of Appeals in Brown. In Brown, the probation officer brought the petition in question after the defendant completed his revocation sentence. In this case, the probation officer brought the petition in question before Harris completed his revocation sentence.

The difference in timeline is significant because, applying Brown and Ides, Harris's original term of supervised release did not end until November 5, 2015, the date on which he completed his revocation sentence. Cf. Brown, 2016 WL 3182700 ("Brown's original term of supervised release expired in June 2014 when he completed his revocation sentence."). That means that the probation officer's October 23, 2015 petition to revoke the original release term did not occur after the term's expiration (on November 5, 2015). Cf. id. ("making the probation officer's November 2014 petition to revoke the original release term fall after that term's expiration"). As a result, the district court presently has jurisdiction, on the basis of the October 23, 2015 revocation petition, to revoke Harris's original term of supervised release and impose a new revocation sentence. Cf. id. ("As a result, the district court did not have jurisdiction in April 2015, on the basis of a November 2014 revocation petition, to revoke Brown's original term of supervised release and impose a new revocation sentence.").

Therefore, under Winfield and Brown, the period of supervised release continues through a revocation sentence imposed on the basis of that period of supervised release, and the Court retains jurisdiction over petitions filed during the revocation sentence. (See also Gov't's Resp., Docket No. 122, 5-7).

II. NINTH CIRCUIT CASES CANNOT GOVERN THIS COURT'S ANALYSIS

In Wing, the Ninth Circuit reached an opposite conclusion, finding that a district court lacks jurisdiction under 18 U.S.C. § 3583(e) (3) to revoke a term of supervised release based on newly discovered violations of a previously revoked term of supervised release. Wing, 682 F.3d at 863.

The timeline and relevant facts in Wing are substantively identical to the timeline in Harris's case. The trouble with following Wing is not Wing's factual similarity, but Wing's legal conclusions, which run contrary to Supreme Court's decision in Johnson and to the Fourth Circuit's decision in Winfield.

Indeed, the Ninth Circuit's decision in Wing depends on an explicit rejection of the Supreme Court's decision in Johnson. [3] The Ninth Circuit found that Johnson's use of an "unconventional" use of the word "revoke" was based on the language of pre–1994 § 3583(e)(3), and decided that Johnson did not apply to cases involving the statute as amended in 1994. Wing, 682 F.3d at 868; see also (Def.'s Reply, ECF No. 123, 1-4). The Ninth Circuit decided that, because Johnson did not guide its decision of a case dealing with post–1994 § 3583(e)(3), it would use the "ordinary" sense of "revoke"—"to void or annul by recalling, withdrawing, or reversing." Id.

***4** For this Court, there are three problems with relying on Wing: Fourth Circuit precedent, Supreme Court precedent, and practicality. First, Wing's rule that "revocation means termination" stands in direct opposition to the Fourth Circuit's opinion in Winfield. Winfield, 665 F.3d at 112 ("a revocation of a term of supervised release is not equivalent to a termination of the release, and thus the revoked term remains in effect."). Second, as the Wing dissent pointed out, Congress never "remove[d] the primary language upon which the Supreme Court's interpretation relied" or otherwise acted to correct Johnson's interpretation of § 3583 (e)(3). Wing, 682 F.3d at 877 (Tallman, J., dissenting); United States v. Vazquez–Alvarez, No. CIV. 12–286 GAG, 2015 WL 5090113, at *5 (D.P.R. Aug. 24, 2015). In other words, Wing hinges on a statutory change that either never happened or did not happen the way the Ninth Circuit claims. Without that statutory change, Johnson (as developed in Winfield) controls. Third, application of the Wing rule presents a perverse incentive: if a defendant engages in conduct that constitutes a technical infraction and engages in conduct which constitutes a substantive infraction, and defendant quickly pleads to the technical infraction and has his sentenced revoked (in the Ninth Circuit's terms, terminated), then a district court does not (after the start of the "second" term of supervised release) have jurisdiction to punish the major infraction committed during the first-and-now-terminated period of supervised release. Wing, 682 F.3d at 897 (Tallman, J., dissenting). Taken together, these problems constitute insurmountable obstacles to adopting the Ninth Circuit's rule in Wing.

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III. HARRIS'S ARGUMENT

Harris's argument in this case consists, essentially, of: (1) Johnson only applies to cases governed by pre-1994 § 3583 (Def.'s Reply 1-4); (2) the Fourth Circuit in Winfield and Brown erred in improperly applying Johnson to cases governed by post-1994 § 3583 (Def.'s Reply 4-8); and (3) the Court should find that Winfield and Brown were wrongly decided and follow Wing instead. (Def.'s Mtn. 5-6). A district court cannot depart from the law of the circuit, at least not without some legitimate intervening change in controlling law. There are two reasons to believe that no such change exists. First, if the 1994 Amendments to § 3583 were such an intervening change in the law, as Wing insists, then Winfield or Brown would have mentioned that change.[4] Second, at least three judges—dissenting Judge Tallman in Wing, the district judge in Wing, and the district judge in Vazquez–Alvarez—have all disagreed with the Wing majority's conclusion that the 1994 Amendments made substantive changes to revocation. Wing, 682 F.3d at 877 (Tallman, J., dissenting); Vazquez–Alvarez, 2015 WL 5090113, at *5. The Court finds these views to be correct.

Harris also argues that "[t]he Court's practical experience also counsels that a defendant is not on supervised release while serving a reimprisonment term" because defendants are not expected to adhere to the standard conditions of supervised release (such as sending monthly reports or not associated with felons) while incarcerated. (Def.'s Reply 8-9). On this basis, Harris alleges that there is a clear difference between supervised release (which he alleges he was not on in October 2015) and incarceration (which he alleges he was in October 2015). This is creative, but it is a distinction without a difference because Winfield is predicated on a rationale that renders the distinction inapplicable.

IV. CONCLUSION

Johnson, Winfield, and Brown teach that Harris's original term of supervised release did not end until November 5, 2015. Because the present petition was filed on October 23, 2015, the Court has jurisdiction over the petition. Harris's reference to Wing is not persuasive because the Court must adhere to the binding authority of its own circuit in Winfield, particularly when that authority has been recently restated in Brown.

For the foregoing reasons, Defendant Marcus L. Harris's MOTION TO DISMISS SUPERVISED RELEASE VIOLATION PETITION FOR LACK OF JURISDICTION (ECF No. 119) will be denied.

It is so ORDERED.

All Citations

Not Reported in F.Supp.3d, 2016 WL 3922050

Footnotes

1 As the Fourth Circuit described Johnson in 2012:

> the Supreme Court addressed whether, under § 3583(e) (3), a district court has the authority to impose a new term of supervised release following re-incarceration for violations of the original supervised-release term.... The Supreme Court determined that a revoked term of supervised release does not terminate the release, but instead "recall[s]," "call[s] or summon[s] back" the release during the defendant's imprisonment for violations of the release. Id. at 706, 120 S.Ct. 1795. The Supreme Court examined the language of § 3583(e)(3), which at that time provided that a court could "revoke a term of supervised release, and require the person to serve in prison all or part of the term of supervised release....." Id. at 704, 120 S.Ct. 1795. The Supreme Court reasoned that the re-incarceration "is not a 'term of imprisonment' that is [ ] be[ing] served, but all or part of 'the term of supervised release.' " Id. at 705, 120 S.Ct. 1795. The Court continued, "If 'the term of supervised release' is being served, in whole or part, in prison, then something about the term of supervised release survives the preceding order of revocation." Id. ... The Court held that because the revocation of a term of supervised release under § 3583(e) (3) does not "terminate" the release—or the district court's jurisdiction to oversee the supervised release past the re-incarceration—a district court had the authority to impose an additional term of supervised release after the completion of the prison sentence. Id. at 712-–13, 120 S.Ct. 1795.

Winfield, 665 F.3d at 110–11 (emphasis added).

2 This does tend to imply that if (1) a Defendant commits a technical violation and a substantive violation on January 1; and (2) on January 2 the probation officer submits a petition only on the technical violation; and (3) the judge on February 1 sentence Defendant to 28 days in jail and twelve months supervised release on the technical violation; then any petition

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for based on the substantive violation of January 1 must be filed in February, while defendant is serving his revocation sentence.

3 Which runs directly contrary to Winfield—released several months before Wing—embracing Johnson.

4 The Brown court acknowledged Wing's existence, and stated that it was not facing the issue at the heart of Wing. Brown, 2016 WL 3182700, at *3.

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KeyCite Red Flag - Severe Negative Treatment
Unconstitutional or PreemptedHeld Unconstitutional by United States v. Haymond, 10th Cir.(Okla.), Aug. 31, 2017

KeyCite Yellow Flag - Negative TreatmentProposed Legislation

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part II. Criminal Procedure
Chapter 227. Sentences (Refs & Annos)
Subchapter D. Imprisonment (Refs & Annos)

18 U.S.C.A. § 3583

§ 3583. Inclusion of a term of supervised release after imprisonment

Effective: December 16, 2016
Currentness

(a) In general.--The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment, except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute or if the defendant has been convicted for the first time of a domestic violence crime as defined in section 3561(b).

(b) Authorized terms of supervised release.--Except as otherwise provided, the authorized terms of supervised release are--

(1) for a Class A or Class B felony, not more than five years;

(2) for a Class C or Class D felony, not more than three years; and

(3) for a Class E felony, or for a misdemeanor (other than a petty offense), not more than one year.

(c) Factors to be considered in including a term of supervised release.--The court, in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release, shall consider the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7).

(d) Conditions of supervised release.--The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision, that the defendant make restitution in accordance with sections 3663 and 3663A, or any other statute authorizing a sentence of restitution, and that the defendant not unlawfully possess a controlled substance. The court shall order as an explicit condition of supervised release for a defendant convicted for the first time of a domestic violence crime as defined in section 3561(b) that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant. The court shall order, as

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an explicit condition of supervised release for a person required to register under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act. The court shall order, as an explicit condition of supervised release, that the defendant cooperate in the collection of a DNA sample from the defendant, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000. The court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of release on supervised release and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the court as provided in section 3563(a)(4). The results of a drug test administered in accordance with the preceding subsection shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3583(g) when considering any action against a defendant who fails a drug test. The court may order, as a further condition of supervised release, to the extent that such condition--

(1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D);

(2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D); and

(3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a);

any condition set forth as a discretionary condition of probation in section 3563(b) and any other condition it considers to be appropriate, provided, however that a condition set forth in subsection 3563(b)(10) shall be imposed only for a violation of a condition of supervised release in accordance with section 3583(e)(2) and only when facilities are available. If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United States, and may order that he be delivered to a duly authorized immigration official for such deportation. The court may order, as an explicit condition of supervised release for a person who is a felon and required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

(e) Modification of conditions or revocation.--The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)--

(1) terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice;

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(2) extend a term of supervised release if less than the maximum authorized term was previously imposed, and may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case; or

(4) order the defendant to remain at his place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

(f) Written statement of conditions.--The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(g) Mandatory revocation for possession of controlled substance or firearm or for refusal to comply with drug testing.--If the defendant--

(1) possesses a controlled substance in violation of the condition set forth in subsection (d);

(2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm;

(3) refuses to comply with drug testing imposed as a condition of supervised release; or

(4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;

the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

(h) Supervised release following revocation.--When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release

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authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

(i) Delayed revocation.--The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

(j) Supervised release terms for terrorism predicates.--Notwithstanding subsection (b), the authorized term of supervised release for any offense listed in section 2332b(g)(5)(B) is any term of years or life.

(k) Notwithstanding subsection (b), the authorized term of supervised release for any offense under section 1201 involving a minor victim, and for any offense under section 1591, 1594(c), 2241, 2242, 2243, 2244, 2245, 2250, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, 2423, or 2425, is any term of years not less than 5, or life. If a defendant required to register under the Sex Offender Registration and Notification Act commits any criminal offense under chapter 109A, 110, or 117, or section 1201 or 1591, for which imprisonment for a term longer than 1 year can be imposed, the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment under subsection (e)(3) without regard to the exception contained therein. Such term shall be not less than 5 years.

CREDIT(S)

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1999; amended Pub.L. 99-570, Title I, § 1006(a)(1) to (3), Oct. 27, 1986, 100 Stat. 3207-6, 3207-7; Pub.L. 99-646, § 14(a), Nov. 10, 1986, 100 Stat. 3594; Pub.L. 100-182, §§ 8, 9, 12, 25, Dec. 7, 1987, 101 Stat. 1267, 1268, 1272; Pub.L. 100-690, Title VII, §§ 7108, 7303(b), 7305(b), Nov. 18, 1988, 102 Stat. 4418, 4419, 4464 to 4466; Pub.L. 101-647, Title XXXV, § 3589, Nov. 29, 1990, 104 Stat. 4930; Pub.L. 103-322, Title II, § 20414(c), Title XI, § 110505, Title XXXII, § 320921(c), Sept. 13, 1994, 108 Stat. 1831, 2016, 2130; Pub.L. 105-119, Title I, § 115(a)(8)(B)(iv), Nov. 26, 1997, 111 Stat. 2465; Pub.L. 106-546, § 7(b), Dec. 19, 2000, 114 Stat. 2734; Pub.L. 107-56, Title VIII, § 812, Oct. 26, 2001, 115 Stat. 382; Pub.L. 107-273, Div. B, Title II, § 2103(b), Title III, § 3007, Nov. 2, 2002, 116 Stat. 1793, 1806; Pub.L. 108-21, Title I, § 101, Apr. 30, 2003, 117 Stat. 651; Pub.L. 109-177, Title II, § 212, Mar. 9, 2006, 120 Stat. 230; Pub.L. 109-248, Title I, § 141(e), Title II, § 210(b), July 27, 2006, 120 Stat. 603, 615; Pub.L. 110-406, § 14(b), Oct. 13, 2008, 122 Stat. 4294; Pub.L. 114-22, Title I, § 114(d), May 29, 2015, 129 Stat. 242; Pub.L. 114-324, § 2(a), Dec. 16, 2016, 130 Stat. 1948.)

18 U.S.C.A. § 3583, 18 USCA § 3583
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