

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ROBERT CALOVINE :
v. : 3:94CR48(AHN)
3:01CV2044(AHN)
UNITED STATES OF AMERICA :

ORDER

After a careful review of movant's § 2255 motion, it is DENIED.

BACKGROUND

On October 27, 1997, Petitioner pleaded guilty to knowingly and unlawfully using a communication facility, specifically, a telephone, in furtherance of a drug trafficking crime in violation of 21 U.S.C. § 843(b). At the January 15, 1998 sentencing, the Court departed downward from the applicable sentencing guideline range and imposed a sentence of four years probation. The court did not impose a term of imprisonment or period of supervised release.

On June 13, 2000, the court issued a Summons for the defendant to show cause why probation should not be revoked. At a September 18, 2000 hearing on the revocation petition, the defendant admitted violating the terms of his probation. The alleged violations included testing positive for controlled substances and substantive arrests. The court

sentenced defendant to a term of imprisonment of 27 months, with a subsequent three year term of supervised release.

DISCUSSION

Defendant contends that the maximum penalty that could have been imposed upon him subsequent to his probation violations was one year. The government concedes that because a telephone count under section 843b of Title 21 is a Class E felony, the maximum period of incarceration for a violation of supervised release is one year,¹ but it takes issue with petitioner's interpretation of the maximum incarceration period for his violation. The court finds Petitioner's argument misplaced.

Had the Petitioner been sentenced to supervised release, he would be correct in asserting that the maximum incarceration period for a violation is one year. However, Petitioner did not receive a sentence of supervised release. Instead, the court sentenced him to a four year term of probation. Because the provisions relating to supervised release violations are different than those for probation violations, Petitioner's argument lacks merit and is entirely irrelevant.

Section 3561 of Title 18 applies to probation violations

¹The government further concedes that the maximum term outlined in the plea agreement was incorrect.

and governs the maximum term of probation that may be imposed when the underlying criminal offense is a felony. Section 3561 provides a probationary term for a felony of "not less than one nor more than five years." 18 U.S.C. § 3561(c)(1). The court, therefore, had the authority to impose a four year probation term. Probation violations differ significantly from supervised release violations. There are no limits on the period of incarceration a defendant may receive for violating probation. See 18 U.S.C. § 3565(2). Defendant concedes that he received probation and that his probation was revoked as a result of violating the probationary terms. Thus, defendant's argument to the contrary, the court could impose a sentence of incarceration beyond one year.

CONCLUSION

For the reasons discussed above, the petitioner's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 is DENIED. A certificate of appealability will not issue, petitioner having failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. S 2253(c)(2).

SO ORDERED this 25th day of September, 2002, at Bridgeport, Connecticut.

Alan H. Nevas

United States District Judge