

United States v. Kosth

United States Court of Appeals for the Seventh Circuit

August 22, 1995, Submitted ; August 23, 1995, Decided

No. 94-3679

Reporter

1995 U.S. App. LEXIS 24155 *

UNITED STATES OF AMERICA, Plaintiff-Appellee,
v. DANIEL A. KOSTH, Defendant-Appellant.

Notice: [*1] RULES OF THE SEVENTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

Subsequent History: Reported in Table Case Format at: 65 F.3d 170, 1995 U.S. App. LEXIS 30486.

Prior History: Appeal from the United States District Court for the Central District of Illinois. No. 90-40003. Michael M. Mihm, Chief Judge.

Case Summary

Procedural Posture

Defendant appealed a judgment of the United States District Court for the Central District of Illinois, which sentenced him to eight months of imprisonment for his violation of several terms of his supervised release. Defendant's attorney filed a motion to withdraw accompanied by a no-merit brief, arguing that any appeal would be frivolous.

Overview

Defendant was convicted of conspiracy to commit fraud by access device. He received a sentence of 12 months of imprisonment and three years of supervised release, the incarceration beginning on October 22, 1990. On October 14, 1994, before the scheduled termination of defendant's term, the government issued a summons, charging defendant with a number of violations of the conditions of his supervised release. At a revocation hearing held on November 4, 1994, defendant admitted having violated several terms of his supervised release.

The district court sentenced him to eight months of imprisonment. He appealed, and his attorney filed a motion to withdraw accompanied by a no-merit brief. The court held that the revocation hearing might be delayed beyond the date that the supervised release term expired for any reasonably necessary period of time. Determining that the hearing in defendant's case was held barely two weeks after the expiration of his supervised release term, the court held that the delay was reasonable and that any appeal on the issue would be frivolous.

Outcome

The court granted the motion to withdraw and dismissed the appeal.

LexisNexis® Headnotes

Criminal Law &

Procedure > Counsel > Substitution & Withdrawal

[HNI](#) [📄] **Counsel, Substitution & Withdrawal**

A United States court of appeals will grant a motion to withdraw as counsel only if the potential issues on appeal are groundless in light of legal principles and decisions. The court of appeals must examine the entire record rather than limit its inquiry to the points raised in the no-merit brief.

Criminal Law &

Procedure > Sentencing > Supervised Release

[HN2](#) [📄] **Sentencing, Supervised Release**

See 18 U.S.C.S. § 3583(i).

Judges: Before Hon. Walter J. Cummings, Circuit Judge, Hon. John L. Coffey, Circuit Judge, Hon. Ilana Diamond Rovner, Circuit Judge

Opinion

ORDER

Daniel Kosth participated in a credit card fraud scheme and was convicted of conspiracy to commit fraud by access device, in violation of 18 U.S.C. §§ 371 and 1029(a)(1). He received a sentence of twelve months of imprisonment and three years of supervised release. His incarceration commenced on October 22, 1990. At a hearing held on November 4, 1994, Kosth admitted that he violated several terms of his supervised release, and the district court sentenced him to eight months of imprisonment. He appeals.

Kosth's attorney, Donovan S. Robertson, filed a motion to withdraw accompanied by a no-merit brief, arguing that any appeal would be frivolous. *See Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493, 87 S. Ct. 1396 (1967). **HNI** [↑] We will grant [*2] Robertson's motion only if the potential issues on appeal are "groundless in light of legal principles and decisions." *United States v. Eggen*, 984 F.2d 848, 850 (7th Cir. 1993). The Court of Appeals must examine the entire record rather than limit its inquiry to the points raised in the no-merit brief. *Anders*, 386 U.S. at 744.

Robertson notes the potential argument that the revocation of Kosth's supervised release was untimely. Kosth was released from prison on October 20, 1991 and began serving his term of supervised release. On October 14, 1994, five days before the scheduled termination of his term, the government issued a summons charging Kosth with a number of violations of the conditions of his supervised release. The revocation hearing was held on November 4.

Kosth could potentially argue that the revocation of his supervised release was untimely because his term was scheduled to end on October 19, but the revocation hearing was not held until November 4. However, the summons was issued on October 14, and the revocation is timely as long as a warrant or summons is issued

before the expiration of the supervised release term. 18 U.S.C. § 3583(i). ¹ Section 3583(i) [*3] **HN2** [↑] states that the hearing may be delayed beyond the date that the supervised release term expires for any "reasonably necessary" period of time. In Kosth's case, the hearing was held barely two weeks after the expiration of his supervised release term. This delay was reasonable, and any appeal on the issue would be frivolous.

In addition, our independent review of the record does not reveal any other potential grounds for appeal. [*4] Kosth received a hearing, as required by Fed. R. Crim. P. 32.1(a)(2), where he admitted violating several terms of his supervised release, including the commission of new federal and state crimes (false statements and theft), failing to pay restitution, and incurring debts of over \$ 250 without the approval of his probation officer. His eight month sentence falls within the guideline range for Grade B and C violations. *See* U.S.S.G. § 7B1.4(a). Finally, Kosth did not respond to our notice under Circuit Rule 51(a) or provide the court with any additional grounds for a possible appeal. Thus, we are satisfied that any appeal from the revocation of Kosth's supervised release would be frivolous. Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

End of Document

¹Section 3583(i) states: "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."