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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CR. 88-00075-01-R
)	
VERNARD LEWIS MERRITT,)	
)	
Defendant.)	

MEMORANDUM OPINION

This matter is before the Court on the probation officer's petition for action on defendant Merritt's alleged violations of the conditions of supervised release. For the reasons discussed below, the petition will be DISMISSED and the defendant will be RELEASED from the terms of his supervised release.

BACKGROUND:

The defendant, Vernard Lewis Merritt ("Merritt") was indicted in November of 1988 on a two count indictment. Count One of the indictment charged Merritt with stealing property of the United States valued in excess of \$100, in violation of 18 U.S.C. § 641. Count Two charged Merritt with the assimilated crime of breaking and entering, during the nighttime, with intent to commit larceny, in violation of Va. Code Ann. § 18.2-91 (assimilated by 18 U.S.C. § 13). On January 18, 1989, the defendant, pursuant to a written plea agreement, pleaded guilty to a lesser included offense on Count One and to the charged offense on Count two. Merritt came

before the Court for sentencing on March 20, 1989. Merritt was sentenced to a term of imprisonment of 12 months on Count One and a term of imprisonment of 18 months on Count Two, the terms of imprisonment to run concurrently. Merritt was also sentenced to concurrent three year terms of supervised release.

On July 17, 1991, Merritt came before the Court for a hearing on alleged violations of his terms of supervised release. The Court found him to be in violation of his supervised release, revoked that supervised release, and sentenced him to six months imprisonment. The Court also ordered that following his term of imprisonment he should be placed back on supervised release for whatever period was left on his original three year term of supervised release. The probation officer has now petitioned the Court regarding violations of the conditions of the reimposed supervised release.

DISCUSSION:

In a recent case, the Fourth Circuit has determined, as a matter of statutory interpretation, that 18 U.S.C. § 3583(e) does not authorize a court to reimposed a term of supervised release after revocation of the original term of supervised release. United States v. Cooper, 1992 U.S. App. LEXIS 7933 (4th Cir. April 24, 1992).¹ As a matter of statutory interpretation, it should be

¹ At the time of Merritt's first revocation hearing, the Fourth Circuit had not addressed whether or not 18 U.S.C. § 3583(e) authorized reimposition of supervised release. Further, there has been disagreement among the courts as to whether or not supervised release could be reimposed after revocation. Compare United States

applied retroactively. Cf. United States v. Mandel, 672 F. Supp. 864, 873-76 (D. Md. 1987), aff'd, 862 F.2d 1067 (4th Cir. 1988), cert. denied, 491 U.S. 906 (1989). Since the Court lacked the authority to reimpose supervised release, it necessarily lacks the authority to find the defendant in violation of the terms of that supervised release. Therefore, the petition for violation of the terms of supervised release must be dismissed and the defendant will be released from serving any more of the reimposed term of supervised release.

Let the Clerk send a copy of this Memorandum Opinion and the accompanying Order to all counsel of record.

DATE

SENIOR UNITED STATES DISTRICT JUDGE

v. Behnezhad, 907 F.2d 896 (9th Cir. 1990) with United States v. Boling, 947 F.2d 1461 (10th Cir. 1991); see also U.S.S.G § 7B1.3(g)(2).