

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

---

No. 09-1751

---

United States of America,

Appellee,

v.

Lester D. Erby,

Appellant.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

Appeal from the United States  
District Court for the  
Western District of Missouri.

[UNPUBLISHED]

---

Submitted: July 30, 2009  
Filed: August 3, 2009

---

Before MURPHY, COLLOTON, and SHEPHERD, Circuit Judges.

---

PER CURIAM.

Lester D. Erby appeals the district court's<sup>1</sup> decision to revoke his supervised release and the court's imposition of a 10-month prison term as his revocation sentence.

Upon review, we conclude that the district court properly revoked Erby's supervised release, see 18 U.S.C. § 3583(g)(4) (If defendant "as part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1

---

<sup>1</sup>The Honorable Dean Whipple, United States District Judge for the Western District of Missouri.

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).”), and that the revocation sentence--which was imposed following the court’s consideration of the applicable advisory Guidelines range and appropriate sentencing factors under 18 U.S.C. § 3553(a)--is not unreasonable, see U.S.S.G. § 7B1.4 (policy statement) (advisory Guidelines range for Grade C violation and Category IV criminal history is 6-12 months in prison); 18 U.S.C. § 3583(e) (specifying sentencing factors courts must consider in revocation decision); United States v. Nelson, 453 F.3d 1004, 1006 (8th Cir. 2006) (appellate court reviews revocation sentence to determine whether it is unreasonable in relation to, inter alia, advisory Guidelines range and § 3553(a) factors); see also 18 U.S.C. § 3583(e)(3) (for Class C felony, maximum term of imprisonment upon revocation of supervised release is 2 years).

Accordingly, we affirm. We also grant counsel’s motion to withdraw, subject to counsel informing appellant about procedures for seeking rehearing and filing a petition for certiorari.

---