

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

No. 99-1613

United States of America,

Appellee,

v.

Richard P. Elder,

Appellant.

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[UNPUBLISHED]

Submitted: October 7, 1999

Filed: October 28, 1999

Before WOLLMAN, Chief Judge, FLOYD R. GIBSON, and RICHARD S. ARNOLD,
Circuit Judges.

PER CURIAM.

Richard P. Elder was previously sentenced to a total of 77 months' imprisonment and three years' supervised release for armed bank robbery. While Elder was serving his supervised release, his probation officer petitioned for his arrest, alleging, as relevant, that Elder had submitted urine samples that tested positive for drug use and had failed to attend individual counseling sessions. After Elder failed to rebut his probation officer's testimony during the revocation hearing concerning the alleged

supervised release violations, the district court¹ revoked Elder's supervised release and ordered him to serve 12 months' imprisonment and no further term of supervised release. Elder appeals, challenging the district court's application of the U.S. Sentencing Guidelines Manual and the court's finding that he violated his supervised release conditions.

Based on the armed-robbery offense that resulted in his original term of supervised release, Elder was subject to up to three years' imprisonment upon revocation of supervised release. See 18 U.S.C. § 3583(e)(3); 18 U.S.C. § 2113(d); 18 U.S.C. § 3559(a)(2). Because the district court sentenced Elder to a term of imprisonment within the 7-to-13 month suggested range under U.S. Sentencing Guidelines Manual § 7B1.4(a), p.s. (1998), we conclude that his revocation sentence was proper.

We further conclude that the evidence was sufficient to permit the district court to find by a preponderance of the evidence that Elder committed the charged violations of his supervised release, as Elder concedes on appeal that he failed to rebut any of his probation officer's testimony concerning his numerous violations. See 18 U.S.C. § 3583(e)(3); cf. United States v. Grimes, 54 F.3d 489, 493 (8th Cir. 1995).

We grant counsel's motion to withdraw.

The judgment is affirmed.

¹The Honorable Russell G. Clark, United States District Judge for the Western District of Missouri.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.