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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PERCY DILLON,

Defendant.

No. CR 14-00024 WHA

**ORDER DENYING
MOTION TO TERMINATE
OR REDUCE TERM OF
SUPERVISION**

INTRODUCTION

Defendant has filed a *pro se* motion to terminate supervised release early on December 1, 2014, or alternatively, to reduce his term of supervision. For the reasons discussed below, the motion is **DENIED**.

STATEMENT

In the Western District of Pennsylvania, a jury convicted defendant Percy Dillon of three charges: (1) conspiracy to distribute and possess with intent to distribute in excess of five-hundred grams of cocaine and in excess of fifty grams of cocaine base; (2) use of a firearm during and in relation to a drug-trafficking crime; and (3) possession with intent to distribute in excess of five-hundred grams of cocaine. Defendant was then sentenced to 322 months of custody and five years of supervised release on November 19, 1993.

Thereafter, defendant filed two motions to reduce his sentence due to changes in the sentencing guidelines for crack cocaine. Both motions were granted, such that defendant's sentence was reduced from 322 months of custody to 270 months in custody, and later to time

1 served. At that point, defendant's actual time in custody had exceeded the revised sentencing
2 guidelines by 28 months. He was thus released on November 10, 2011.

3 On December 5, 2011, however, defendant was arrested for delivery of marijuana and
4 association with a known felon — Jerron Lollis, defendant's cousin and co-defendant from the
5 original underlying federal offense. Earlier that day, defendant had called Lollis for a ride home.
6 When Lollis arrived in his car, defendant entered the vehicle and immediately smelled
7 marijuana, confirmed with his cousin that there was marijuana in the car, but nevertheless
8 remained in the car, telling Lollis to "take [him] out of here; just take [him] home, man." *United*
9 *States v. Dillon*, 725 F.3d 362, 364 (3d Cir. 2013). Shortly thereafter, police officers pulled over
10 the car and were "immediately hit by a really strong smell of unburned or fresh marijuana." The
11 police then ordered defendant and Lollis out of the car, but Lollis revved the engine and pulled
12 away (with one of the officers still dangling from the car window). Another officer discharged
13 his weapon in an attempt to stop the vehicle. Once the car stopped, the police arrested defendant
14 and Lollis and recovered over 65 pounds of marijuana from the vehicle, for which Lollis claimed
15 sole responsibility.

16 Defendant was then charged with supervised-release violations, and following a hearing,
17 Judge Alan N. Bloch found that defendant had violated his supervised-release condition to not
18 associate with other felons. As a result, defendant's term of supervised release was revoked, and
19 he was sentenced to 24 months of custody and 36 months of supervised release thereafter. That
20 term of supervision then began on November 29, 2013.

21 On January 15, 2014, defendant was transferred to the present district to continue his
22 supervision. He has since filed a *pro se* motion to terminate his supervised release early on
23 December 1, 2014, or to reduce his term of supervision by the additional 28 months that he
24 served in custody. Having reviewed that motion, as well as the responses from probation and the
25 government, this order decides below.

26 ANALYSIS

27 In support of his motion, defendant cites Section 3583(e)(1) and (2) of Title 18 of the
28 United States Code (emphasis added):

1 **(e) Modification of conditions or revocation.** — The court
 2 may, after considering the factors set forth in section 3553(a)(1),
 (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7) —

3 **(1)** *terminate a term of supervised release and discharge*
 4 *the defendant released at any time after the expiration of*
 5 *one year of supervised release*, pursuant to the provisions
 6 of the Federal Rules of Criminal Procedure relating to the
 modification of probation, if it is satisfied that such action
 is warranted by the conduct of the defendant released and
 the interest of justice;

7 **(2)** extend a term of supervised release if less than the
 8 maximum authorized term was previously imposed, *and*
 9 *may modify, reduce, or enlarge the conditions of*
 10 *supervised release, at any time prior to the expiration or*
 11 *termination of the term of supervised release*, pursuant to
 the provisions of the Federal Rules of Criminal Procedure
 relating to the modification of probation and the
 provisions applicable to the initial setting of the terms
 and conditions of post-release supervision

12 Section 3583(e)(1), however, is not a valid basis for defendant’s motion, at least at this
 13 point. That provision states that early termination of supervised release may be available “after
 14 the expiration of one year of supervised release” Here, defendant has completed almost
 15 nine months of supervision. He is thus not eligible for early termination under Section
 16 3583(e)(1).

17 Nor does Section 3583(e)(2) guarantee defendant his requested relief. The Supreme
 18 Court has stated that “equitable considerations of great weight” underlie Section 3583(e)(2).
 19 *United States v. Johnson*, 529 U.S. 53, 60 (2000). It is also true that this provision “allows the
 20 court to modify or reduce the conditions of supervised release *at any time*,” such that “it is
 21 possible for [a defendant] to receive relief in the form of a reduced or modified term of
 22 supervised release.” *Gunderson v. Hood*, 268 F.3d 1149, 1153 (9th Cir. 2001) (emphasis added).


23 Nevertheless, this order declines to do so given the objections from probation and the
 24 government. For example, both point to the fact that defendant was found to have violated a
 25 condition of his supervised release within a month after his first release from custody on
 26 November 10, 2011. Indeed, that incident involved the police stopping defendant while he was
 27 in a known felon’s car, where there was “a really strong smell of unburned or fresh marijuana”
 28 coming from the vehicle, and where the car was driven away with a police officer still dangling

1 from the car's window. Another officer even discharged his weapon in an attempt to stop the
2 car.

3 This order recognizes that defendant has complied with the conditions of his supervised
4 release so far. Indeed, there have been no positive drug tests, and defendant has maintained
5 regular employment as a maintenance engineer with Citiscape Property Management Company.
6 This is a good performance by defendant on his present term of supervision. Nonetheless, in
7 light of the present record and the factors that the undersigned judge must consider under Section
8 3583, defendant's motion is **DENIED**.

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10 **IT IS SO ORDERED.**

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12 Dated: August 18, 2014.

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15 WILLIAM ALSUP
16 UNITED STATES DISTRICT JUDGE
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