

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *

Docket Number:
1:22-CR-00035-JLS-HKS-1

v. *

Buffalo, New York
August 10, 2023
9:04 a.m.

LUKE MARSHALL WENKE, *

CONTINUED SENTENCING ON
VIOLATION OF SUPERVISED
RELEASE

Defendant. *

* * * * *

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

TRINI E. ROSS,
UNITED STATES ATTORNEY,
By DAVID J. RUDROFF, ESQ.,
Assistant United States Attorney,
Federal Centre,
138 Delaware Avenue,
Buffalo, New York 14202,
Appearing for the United States.

For the Defendant:

FEDERAL PUBLIC DEFENDER'S OFFICE
By ALEXANDER J. ANZALONE, ESQ.,
Assistant Federal Public Defender,
300 Pearl Street,
Suite 200,
Buffalo, New York 14202.

The Courtroom Deputy:

KIRSTIE L. HENRY

1 The Court Reporter: BONNIE S. WEBER, RPR,
2 Notary Public,
3 Robert H. Jackson Courthouse,
4 2 Niagara Square,
5 Buffalo, New York 14202,
6 Bonnie_Weber@nywd.uscourts.gov.

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8 Proceedings recorded by mechanical stenography,
9 transcript produced by computer.

10 (Proceedings commenced at 9:04 a.m.)

11 **THE CLERK:** All rise.

12 The United States District Court for the Western
13 District of New York is now in session. The Honorable John
14 Sinatra presiding.

15 **THE COURT:** Please be seated.

16 **THE CLERK:** The United States versus Luke Marshal
17 Wenke, Case Number 22-CR-35. We're here for a continuation of
18 sentencing on a violation of supervised release.

19 Counsel, please state your appearances for the record.

20 **MR. RUDROFF:** Good morning, Your Honor, David Rudroff
21 on behalf of the Government.

22 **MR. ANZALONE:** Good morning, Your Honor, Alexander
23 Anzalone from the Federal Defenders Office on behalf of
24 Mr. Wenke. Mr. Wenke is to my left in custody.

25 **THE COURT:** Okay. Good morning, counsel.

Good morning, Mr. Wenke.

1 **THE DEFENDANT:** Good morning.

2 **THE COURT:** Okay. Does anyone have anything to talk
3 about before I resume where I left off last week?

4 **MR. RUDROFF:** No, Your Honor.

5 **MR. ANZALONE:** I think just a quick status update that
6 the Court may already be aware of, but Mr. Wenke is scheduled
7 for an appointment at Horizon this morning at 10:30.

8 I provided the address to his father, who is present
9 in the Courtroom and able to provide transportation this
10 morning.

11 The probation has confirmed that the treatment
12 provider has been provided the report from Dr. Rudder, which we
13 certainly hope would -- would and will guide any treatment for
14 Mr. Wenke.

15 **THE COURT:** Okay. Thanks for that update,
16 Mr. Anzalone.

17 The next thing is to pronounce the sentence. If
18 anyone has a different recollection of where we were the last
19 time, say so now, but that's where I left off in my notes.

20 Okay. It is the judgment of this Court that
21 Mr. Wenke's term of supervised release is revoked and he is
22 sentenced to the custody of the Bureau of Prisons for a term of
23 time served.

24 I, in my mind, have shortened the time that Mr. Wenke
25 otherwise would have received to accommodate and to facilitate

1 the treatment.

2 So that's -- at least in terms of thinking about how
3 this was built, it was in reverse from a sentence that would
4 have been longer, to something that's shorter, to accommodate
5 the treatment.

6 Upon -- well, the supervised release term is
7 34 months. And the conditions of supervised release are the
8 following: Within 72 hours, Mr. Wenke shall report in person to
9 the probation office in the district where he is authorized to
10 reside, unless the probation officer instructs you differently.

11 You shall comply with the standard conditions of
12 supervised release adopted by this Court.

13 You shall not commit any crimes under Federal, State
14 or Local law.

15 You shall not possess a firearm, ammunition, or any
16 other dangerous device.

17 You shall not unlawfully possess a control substance.
18 In addition, Mr. Wenke shall participate in a mental health
19 program, including a mental health evaluation and any treatment
20 recommended.

21 The probation officer will supervise the details of
22 any testing and treatment, including the selection of a provider
23 and a schedule.

24 If inpatient treatment is recommended, it must be
25 approved by the Court, unless the defendant consents.

1 He is not to leave such treatment until completion or
2 as ordered by the Court. While in treatment or taking any
3 psychotropic medication, he shall abstain from the use of
4 alcohol and he is required to contribute to the cost of services
5 rendered.

6 This condition serves the statutory sentencing
7 purposes of public protection and rehabilitation.

8 And I also had a note here, and Mr. Anzalone covered
9 that, which is to indicate that his appointment at Horizon is
10 today at 10:30, so that's good.

11 He shall complete an anger management program as well.
12 The probation officer will supervise the details of his
13 participation in the program, including the selection of the
14 provider and a schedule.

15 This condition serves the statutory sentencing
16 purposes of public protection and rehabilitation.

17 Mr. Wenke also shall participate in a program for
18 substance abuse, including substance abuse testing, such as
19 urinalysis and other testing and shall undergo a drug and
20 alcohol evaluation and treatment.

21 If substance abuse is indicated by the testing, the
22 probation officer will supervise the details of any testing and
23 treatment, including the selection of a treatment provider and a
24 schedule.

25 If inpatient treatment is recommended, it must -- I

1 must approve it, unless Mr. Wenke consents and he is not to
2 leave any such treatment until completion or as ordered by the
3 Court.

4 While in treatment and after discharge, he is to
5 abstain from the use of alcohol and he must contribute to the
6 cost of services rendered.

7 This condition serves the statutory sentencing
8 purposes of public protection, deterrence and rehabilitation.

9 Mr. Wenke shall submit to a search of his person,
10 property, vehicle, place of residence or any other property
11 under his control, based upon reasonable suspicion and shall
12 permit confiscation of any evidence or contraband discovered.

13 He shall not have any contact directly or indirectly,
14 including through social media, telephone, text, mail or e-mail
15 with the victim, RG, family members, friends, associates or his
16 current or prior places of employment.

17 This condition serves the statutory sentencing
18 purposes of deterrence, public protection and rehabilitation.

19 The search condition I left it out, but it serves the
20 statutory purposes of public protection, deterrence and as well.

21 To arrive at this sentence, in addition to what I just
22 mentioned earlier about how conceptually I kind of worked in
23 reverse to reduce the number of days or months, if you will,
24 what I did, obviously, was calculate the applicable sentencing
25 guidelines that I mentioned last week when we were here.

1 I considered the nonbinding guidelines, provisions, as
2 well as the sentencing factors and the sentencing statute as
3 limited by 18 U.S.C. 3583(e).

4 I find that the sentence imposed is sufficient, but
5 not greater than necessary, based on the factors, again, in the
6 sentencing statute limited by 3583(e).

7 I'm imposing this sentence for several reasons that
8 include the violation of the Court's trust, also, the need to
9 encourage Mr. Wenke to turn a page and observe all conditions
10 going forward and the need to emphasize that this process,
11 generally, and probation's supervision is a serious matter.

12 In light of these circumstances, obviously, I'm
13 imposing the sentence the way it is to facilitate the treatment,
14 one of the major goals of this sentence.

15 In light of these circumstances, this sentence, as
16 I've said before is sufficient, but not greater than necessary
17 to deter future criminal conduct and protect the public.

18 I've considered the guidelines and I am imposing a
19 sentence below the guidelines, because a guideline sentence
20 would be greater than necessary.

21 Mr. Wenke, I must advise you that you have a right to
22 appeal, including the right to appeal your sentence,
23 particularly if you think the sentence is contrary to law.

24 If you want to appeal, you must file a notice of
25 appeal within, either, 14 days of the judgment or 14 days of any

1 notice of appeal from the Government, whichever is later.

2 If you request, the clerk must prepare and file a
3 notice of appeal on your behalf.

4 If you can't pay the costs of an appeal, you may ask
5 for permission to appeal without paying costs.

6 You have the right to be represented by a lawyer on
7 any appeal. And if you can't afford one, you have the right to
8 have a lawyer appointed to represent you.

9 Is there anything further from the Government?

10 **MR. RUDROFF:** No, Your Honor.

11 **THE COURT:** Mr. Anzalone?

12 **MR. ANZALONE:** No. Thank you, Your Honor.

13 **THE COURT:** A judgment for revocation of supervised
14 release will be prepared promptly, on the form prescribed for
15 judgments.

16 Mr. Wenke, I wish you well, and if there's nothing
17 else, we are concluded.

18 **MR. ANZALONE:** Thank you.

19 **THE COURT:** Thank you.

20 **MR. RUDROFF:** Thank you.

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22 (Proceedings concluded at 9:12 a.m.)

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2 In accordance with 28, U.S.C., 753(b), I certify that these
3 original notes are a true and correct record of proceedings in
4 the United States District Court for the Western District of
5 New York before the Honorable John L. Sinatra, Jr.

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9
10 s/ Bonnie S. Weber
Signature

September 29, 2023
Date

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12 **BONNIE S. WEBER, RPR**

13 Official Court Reporter
14 United States District Court
Western District of New York
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