

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Robin Lynn Vance Geer

No. 19-50319, United States Court of Appeals for the Fifth Circuit (April 6, 2020)

SUMMARY

Supervised release revocation; substantive reasonableness of statutory maximum sentence. The Fifth Circuit affirmed a 60-month sentence imposed after the fifth revocation of supervised release, holding that the district court permissibly considered the defendant's history, characteristics, need for deterrence, and breach of trust—not impermissible retributive factors under 18 U.S.C. § 3553(a)(2) (A). The sentence was substantively reasonable under the plainly-unreasonable standard, even though it exceeded the advisory guidelines range of 8–14 months, because it was within the statutory maximum and supported by the totality of circumstances.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	BARKSDALE; HAYNES; ENGELHARDT
JURISDICTION	Federal
DECIDED	April 6, 2020
DOCKET	19-50319
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Western District of Texas, USDC No. 7:07-CR-16-1, following the fifth revocation of supervised release.
STANDARD OF REVIEW	plainly-unreasonable standard
PRECEDENTIAL VALUE	Unpublished
PARTIES	Robin Lynn Vance Geer v. United States of America

TOPICS

- criminal procedure
- sentencing
- standard of review
- appellate procedure

PRACTICE AREAS

- Criminal Law
- Appellate Practice

QUESTIONS PRESENTED

1. Whether the district court imposed a retributive sentence based on impermissible sentencing factors under 18 U.S.C. § 3553(a)(2)(A)
2. Whether the sentence is substantively unreasonable

HOLDINGS

1. The contention is unfounded; the record shows the court based the sentence on permissible considerations such as Geer's history and characteristics, the need for deterrence, and his breach of the court's trust.
2. The sentence is substantively reasonable.

KEY QUOTATIONS

“A sentence is substantively unreasonable if it (1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors.” (2)

“[A] sentencing error occurs when an impermissible consideration is a dominant factor in the court's revocation sentence, but not when it is merely a secondary concern or an additional justification for the sentence” (2)

“Sentences imposed upon revocation of supervised release may not take into account the retributive objectives of 18 U.S.C. § 3553(a)(2)(A)” (2)

FACTUAL BACKGROUND

Geer had multiple revocations of supervised release for drug use, was given substance-abuse treatment opportunities, and indicated he would continue drug use despite his daughter expecting a child. The district court imposed a 60-month sentence, the statutory maximum, after the fifth revocation.

PROCEDURAL HISTORY

Geer challenged the statutory maximum 60-month sentence imposed after the fifth revocation of his supervised release.

DISPOSITION

affirmed

CASES CITED

- United States v. Sanchez, 900 F.3d 678 (5th Cir. 2018)
- United States v. Warren, 720 F.3d 321 (5th Cir. 2013)
- Gall v. United States, 552 U.S. 38 (2007)
- United States v. Rivera, 784 F.3d 1012 (5th Cir. 2015)

OPINION

PER CURIAM.

Case: 19-50319 Document: 00515373496 Page: 1 Date Filed: 04/06/2020 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT United States Court of Appeals Fifth Circuit No. 19-50319 FILED April 6, 2020 Summary Calendar Lyle W. Cayce Clerk UNITED STATES OF AMERICA, Plaintiff - Appellee v. ROBIN LYNN VANCE GEER, Defendant - Appellant Appeal from the United States District Court for the Western District of Texas USDC No. 7:07-CR-16-1 Before BARKSDALE, HAYNES, and ENGELHARDT, Circuit Judges.

PER CURIAM: * Robin Lynn Vance Geer challenges the statutory maximum 60-month sentence imposed following the fifth revocation of his supervised release. He contends: the district court imposed a retributive sentence based on impermissible sentencing factors; and his sentence is substantively unreasonable. * Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir.

R. 47.5.4. Case: 19-50319 Document: 00515373496 Page: 2 Date Filed: 04/06/2020 No. 19-50319 We review sentences imposed on revocation of supervised release under the plainly-unreasonable standard. *United States v. Sanchez*, 900 F.3d 678, 682 (5th Cir. 2018). Such a sentence's substantive reasonableness is subject to the same standards used to review whether an initial sentence is substantively reasonable.

See *United States v. Warren*, 720 F.3d 321, 332 (5th Cir. 2013) (citing cases addressing an initial sentence in reviewing a revocation sentence). We consider “the totality of the circumstances, including the extent of any variance from the Guidelines range” and afford “due deference to the district court’s decision that the § 3553(a) [sentencing] factors, on a whole, justify the extent of the variance”.

Gall v. United States, 552 U.S. 38, 51 (2007). “A sentence is substantively unreasonable if it (1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors.” *Warren*, 720 F.3d at 332 (internal quotation marks and citation omitted). “[A] sentencing error occurs when an impermissible consideration is a dominant factor in the court’s revocation sentence, but not when it is merely a secondary concern or an additional justification for the sentence”.

United States v. Rivera, 784 F.3d 1012, 1017 (5th Cir. 2015) (citation omitted). Sentences imposed upon revocation of supervised release may not take into account the retributive objectives of 18 U.S.C. § 3553(a)(2)(A), *Sanchez*, 900 F.3d at 683–84 & n.3 (citations omitted), which consist of “the need for the sentence imposed... to reflect the seriousness of the [supervised-release

violation], to promote respect for the law, and to provide just punishment for the [supervised-release violation]”.

Geer’s contention the court impermissibly considered 18 U.S.C. § 3553(a)(2)(A)’s factors is unfounded. The record demonstrates the court based the sentence on Geer’s history and characteristics, the need for 2 Case: 19-50319 Document: 00515373496 Page: 3 Date Filed: 04/06/2020 No. 19-50319 deterrence, and his breach of the court’s trust. These are permissible considerations in a revocation hearing.

See 18 U.S.C. § 3583(e); § 3553(a)(1), (a)(2)(B); U.S.S.G. ch.7, pt. A, introductory cmt. Regarding the substantive reasonableness of Geer’s sentence, the court: considered Geer’s request for a fair sentence in the light of his nonviolent violations of his supervised release; addressed the numerous revocations of his supervised release for drug use; discussed the fact he had been given the opportunity to participate in substance-abuse treatment; and heard his declaration he would not discontinue his drug use, even though his daughter was expecting a child.

Further, as stated above, the court considered relevant sentencing factors, including his personal history and characteristics and the need to deter him. See 18 U.S.C. § 3553(a)(1), (a)(2)(B). Although Geer’s 60- month sentence exceeded the recommended range of eight-14 months, it was within the statutory maximum. See *id.* § 3583(e)(3). “We have routinely affirmed revocation sentences exceeding the advisory range, even where the sentence equals the statutory maximum.” Warren, 720 F.3d at 332 (citations omitted).

AFFIRMED. 3