

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Jaime Alvar Carvajal

No. 19-10575 (5th Cir. Feb. 5, 2020) · No. 19-10575 · Decided February 5, 2020

SUMMARY

The Fifth Circuit affirmed the revocation of Jaime Alvar Carvajal’s supervised release and his sentence of 12 months and one day of imprisonment. The court held that, because neither the Supreme Court nor the Fifth Circuit had extended United States v. Haymond to revocations under 18 U.S.C. § 3583(g), any alleged constitutional error was not plain.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Per curiam; Wiener; Haynes; Costa
JURISDICTION	Federal
DECIDED	February 5, 2020
DOCKET	19-10575
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed the district court's revocation of supervised release and imposition of a 12-month-and-one-day prison sentence, challenging the constitutionality of 18 U.S.C. § 3583(g) under United States v. Haymond.
STANDARD OF REVIEW	Plain error review because the constitutional challenge was not raised in the district court. The defendant had to show a forfeited error that was clear or obvious, affected substantial rights, and seriously affected the fairness, integrity, or public reputation of judicial proceedings.
PRECEDENTIAL VALUE	Unpublished and nonprecedential under 5th Cir. R. 47.5, except as permitted by Rule 47.5.4.
PARTIES	Jaime Alvar Carvajal v. United States of America

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether 18 U.S.C. § 3583(g) is unconstitutional under *United States v. Haymond* because it does not require a jury determination beyond a reasonable doubt before supervised release is revoked and imprisonment is imposed.
2. Whether the district court committed plain error by revoking Carvajal's supervised release and imposing imprisonment under § 3583(g).

HOLDINGS

1. The district court did not commit plain error because neither the Supreme Court nor the Fifth Circuit had extended *Haymond*'s constitutional holding concerning § 3583(k) to revocations under § 3583(g), so any alleged error was not clear or obvious.

KEY QUOTATIONS

“seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.” (slip op. at 2)

FACTUAL BACKGROUND

The district court revoked Jaime Alvar Carvajal's previously imposed term of supervised release and imposed a sentence of 12 months and one day of imprisonment. On appeal, Carvajal argued that the revocation framework in 18 U.S.C. § 3583(g), which requires revocation and imprisonment for specified supervised-release violations including refusal to comply with drug testing, was unconstitutional because it did not require a jury finding beyond a reasonable doubt.

PROCEDURAL HISTORY

The United States District Court for the Northern District of Texas revoked Carvajal's previously imposed term of supervised release and sentenced him to 12 months and one day of imprisonment. Because Carvajal did not raise the constitutional challenge in the district court, the Fifth Circuit reviewed it for plain error and affirmed.

DISPOSITION

affirmed

CASES CITED

- *United States v. Whitelaw*, 580 F.3d 256, 259 (5th Cir. 2009)
- *Puckett v. United States*, 556 U.S. 129, 135 (2009)
- *United States v. Haymond*, 139 S. Ct. 2369, 2382 n.7 (2019)
- *United States v. Gonzalez*, 792 F.3d 534, 538 (5th Cir. 2015)
- *United States v. Escalante-Reyes*, 689 F.3d 415, 418 (5th Cir. 2012) (en banc)

OPINION

PER CURIAM.

Case: 19-10575 Document: 00515299404 Page: 1 Date Filed: 02/05/2020 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT United States Court of Appeals Fifth Circuit FILED No. 19-10575 February 5, 2020 Summary Calendar Lyle W. Cayce Clerk UNITED STATES OF AMERICA, Plaintiff-Appellee v. JAIME ALVAR CARVAJAL, Defendant-Appellant Appeal from the United States District Court for the Northern District of Texas USDC No. 3:19-CR-165-1 Before WIENER, HAYNES, and COSTA, Circuit Judges.

PER CURIAM: * Defendant-Appellant Jaime Alvar Carvajal appeals the district court's revocation of a previously imposed term of supervised release and imposition of a sentence of 12 months and one day of imprisonment. He asserts that his supervised release was revoked pursuant to 18 U.S.C. § 3583(g), which requires revocation and imposition of a term of imprisonment when the defendant is found to have committed specified types of violations of the terms * 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: 19-10575 Document: 00515299404 Page: 2 Date Filed: 02/05/2020 No. 19-10575 of supervised release, including the refusal to comply with drug testing. He contends that, because § 3583(g) does not require a jury determination beyond a reasonable doubt, it is unconstitutional in view of the Supreme Court's decision in *United States v. Haymond*, 139 S. Ct.

2369 (2019). Carvajal concedes that review is limited to plain error because he did not raise this issue in the district court. See *United States v. Whitelaw*, 580 F.3d 256, 259 (5th Cir. 2009). To prevail on plain error review, he must show a forfeited error that is clear or obvious and that affects his substantial rights. See *Puckett v. United States*, 556 U.S. 129, 135 (2009).

If Carvajal makes such a showing, we have the discretion to correct the error, but we should do so only if it "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *Id.* (internal quotation marks and citation omitted).

The opinion in *Haymond* addresses the constitutionality of § 3583(k), and the plurality opinion specifically states that it does not express any view on the constitutionality of other subsections of the statute, including § 3583(g). See *Haymond*, 139 S. Ct. at 2382 n.7. There currently is no caselaw from either the Supreme Court or this court extending *Haymond* to § 3583(g) revocations, so we conclude that there is no error that was plain.

See *United States v. Gonzalez*, 792 F.3d 534, 538 (5th Cir. 2015); *United States v. Escalante-Reyes*, 689 F.3d 415, 418 (5th Cir. 2012) (en banc). As Carvajal has not demonstrated that the

district court committed plain error, so that court's revocation of his supervised release and the term of imprisonment are **AFFIRMED**. 2