

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.

OPINION

United States v. Jaime Carvajal

PER CURIAM.

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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 He asserts that his supervised release was revoked pursuant to 18 U.S.C. § 3583(g), which requires revocation and imposition of a term of imprisonment when the defendant is found to have committed specified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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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