

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

United States v. Ewart

United States v. Ewart, No. 18-2866-cr (2d Cir. Nov. 5, 2019) · No. 18-2866-cr · Decided November 5, 2019

SUMMARY

Defendant appealed modification of supervised release conditions adding GPS monitoring and internet restrictions. The Second Circuit affirmed, holding that the district court did not abuse its discretion given newly revealed admissions of child sexual abuse, as the conditions were reasonably related to deterrence and public protection. The court rejected vagueness and improper delegation challenges, and found the First Amendment challenge unripe.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	José A. Cabranes; Reena Raggi; Edward R. Korman
JURISDICTION	Federal
DECIDED	November 5, 2019
DOCKET	18-2866-cr
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a September 25, 2018 order of the United States District Court for the Southern District of New York modifying conditions of supervised release.
STANDARD OF REVIEW	Abuse of discretion for conditions of supervised release; plain error for unraised objections; de novo for questions of law.
PRECEDENTIAL VALUE	unpublished
PARTIES	Scott Michael Ewart v. United States of America

TOPICS

[criminal procedure](#)[sentencing](#)[standard of review](#)[appellate procedure](#)[ripeness](#)[harmless error](#)

QUESTIONS PRESENTED

- Whether the GPS monitoring and computer monitoring conditions constitute an unreasonable deprivation of liberty
- Whether the internet usage restrictions are impermissibly vague

3. Whether the district court improperly delegated implementation of conditions to the treatment provider
4. Whether the First Amendment challenge to website restrictions is ripe for review

HOLDINGS

1. The district court did not abuse its discretion in imposing GPS monitoring and computer monitoring conditions.
2. The internet restrictions are not impermissibly vague; a person of ordinary intelligence would understand the categories requiring approval.
3. The district court did not improperly delegate; the conditions allow the treatment provider to oversee certain restrictions, not delegate authority.
4. The First Amendment challenge is not ripe because Ewart has not identified any websites to which he has been denied access.

KEY QUOTATIONS

“This Court reviews challenges to conditions of supervised release for abuse of discretion.” (at 2)

“None of the conditions imposed in the District Court's order delegate any authority to the treatment provider; they simply grant Ewart's treatment provider the ability to reasonably oversee certain restrictions.”
(at 3)

“we agree with the Government that, this challenge is not ripe because Ewart has not identified any websites to which he has been denied access, and withholding of consideration now will not cause substantial hardship to the parties given the District Court's availability to consider in the first instance any challenges that may arise.” (at 3)

FACTUAL BACKGROUND

Ewart was on supervised release. During post-release treatment, he admitted to using social media to contact dozens of minors and sexually abusing at least ten children. He also expressed troubling views about child sexual abuse. The district court modified conditions to include GPS monitoring and computer/internet monitoring and restrictions.

PROCEDURAL HISTORY

The district court modified Ewart's supervised release conditions to add GPS monitoring and computer/internet monitoring and restrictions. Ewart appealed.

DISPOSITION

affirmed

CASES CITED

- United States v. Dupes, 513 F.3d 338 (2d Cir. 2008)

- In re Sims, 534 F.3d 117 (2d Cir. 2008)
- In re City of New York, 607 F.3d 923 (2d Cir. 2010)
- United States v. Green, 618 F.3d 120 (2d Cir. 2010)
- United States v. Reeves, 591 F.3d 77 (2d Cir. 2010)
- United States v. MacMillen, 544 F.3d 71 (2d Cir. 2008)
- United States v. Browder, 866 F.3d 504 (2d Cir. 2017)
- United States v. Simmons, 343 F.3d 72 (2d Cir. 2003)
- United States v. Degroate, --- F.3d ----, 2019 WL 4891990 (2d Cir. Oct. 4, 2019)
- United States v. Balon, 384 F.3d 38 (2d Cir. 2004)
- United States v. Johnson, 446 F.3d 272 (2d Cir. 2006)
- United States v. Harris, 838 F.3d 98 (2d Cir. 2016)