

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

THOMAS GILMORE STEWART,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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Appendix A Judgment and Opinion of Fifth Circuit

Appendix B Judgment Revoking Supervised Release of the United States District Court for the Northern District of Texas

APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

July 11, 2018

Lyle W. Cayce
Clerk

No. 17-11258
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

THOMAS GILMORE STEWART,

Defendant-Appellant

Appeals from the United States District Court
for the Northern District of Texas
USDC No. 3:92-CR-231-1

Before WIENER, DENNIS, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Thomas Gilmore Stewart was convicted in 1992 of being a felon in possession of a firearm and was sentenced to 46 months of imprisonment and three years of supervised release. His supervised release term began on October 17, 2013. Subsequently, the probation office filed a revocation petition alleging that Stewart had pleaded guilty to a state charge of possession of a controlled substance in Texas. At the revocation hearing,

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

Stewart pleaded not true to the allegation. The Government introduced a certified copy of the judgment of conviction for Stewart's guilty plea to the state charge of possession of a controlled substance to support the petition for revocation of Stewart's release. The district court revoked Stewart's supervised release and sentenced him to 21 months of imprisonment and no additional supervised release.

Stewart argues that the district court erred in relying solely on the judgment of conviction to prove a violation of his conditions of release because he is actively challenging the validity of the guilty plea. We generally review a revocation of supervised release for abuse of discretion. *United States v. Spraglin*, 418 F.3d 479, 480 (5th Cir. 2005). Revocation is proper if the district court finds "by a preponderance of the evidence that the defendant violated a condition of his release." *Id.*; *see* 18 U.S.C. § 3583(e)(3); *see also* *United States v. Hinson*, 429 F.3d 114, 118-19 (5th Cir. 2005).

In *Spraglin*, we held that revocation based on commission of a new crime may be based on evidence of a conviction that is still pending appellate review. *Spraglin*, 418 F.3d at 480-81. Stewart acknowledges the holding in *Spraglin* and makes no specific argument to preclude the holding from being applied to the specific facts of this case. Stewart has not shown that the certified copy of the judgment of his conviction was not sufficient to establish by a preponderance of the evidence that he committed a crime or possessed a controlled substance. The district court did not abuse its discretion in finding that he violated the conditions of his supervised release. *See Spraglin*, 418 F.3d at 480; *Hinson*, 429 F.3d at 118-19.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

v.

THOMAS GILMORE STEWART

JUDGMENT IN A CRIMINAL CASE
(For Revocation of Probation or Supervised Release)

Case Number: **3:92-CR-00231-B(1)**

USM Number: **23067-077**

Gabriel Reyes

Defendant's Attorney

THE DEFENDANT:

Was found to have violated Standard Condition No. 7 and one (1) Mandatory Condition of supervised release after denial of guilt.

See Petition for Offender Under Supervision filed September 15, 2014.

Certified copy of the Judgment in a Criminal Case imposed December 9, 1992, in the Northern District of Texas, Dallas Division, is attached.

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has not violated condition(s) _____
condition. _____ and is discharged as to such violation(s)

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

October 12, 2017

Date of Imposition of Judgment

Signature of Judge

JANE J. BOYLE, UNITED STATES DISTRICT JUDGE

Name and Title of Judge

October 13, 2017

Date

DEFENDANT: THOMAS GILMORE STEWART
CASE NUMBER: 3:92-CR-00231-B(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

21 months with no additional term of supervised release to follow.

The court makes the following recommendations to the Bureau of Prisons:

That the defendant be placed in a federal medical facility if eligible.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at a.m. p.m. on

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payments of \$ _____ due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or F below; or

FILED FOR
CAUSE NO. 39171CR

THE STATE OF TEXAS

2014 JUL 18 PM 3:26

VS

MELANIE REED
DISTRICT CLERK
ELLIS COUNTY, TX

THOMAS GILMORE STEWART

IN THE 40TH JUDICIAL
DISTRICT COURT OF
ELLIS COUNTY, TEXAS

**JUDGMENT ON PLEA OF GUILTY BEFORE COURT
WAIVER OF JURY TRIAL**

Date of Judgment: JULY 10, 2014

Judge Presiding: BOB CARROLL

Attorney for State: PATRICK M. WILSON

Attorney for Defendant: DAN D. COX

Offense Convicted of: POSSESSION OF CONTROLLED SUBSTANCE

Date Offense Committed: MARCH 25, 2014

Degree: THIRD

T.P.C. or H.S.C.: 481.115

Charging Instrument: INDICTMENT

Plea to Court: GUILTY

Verdict of Court: GUILTY

Terms of Plea Bargain (in detail): 3 YEARS TDCJID AND NO FINE

Plea to Enhancement Paragraph(s): NONE

Findings on Enhancement: NONE

Findings on Use of Deadly Weapon: NONE

Fine: \$ NONE

Date Sentence Imposed: JULY 10, 2014

Costs: \$ 889.00

Date to Commence: JULY 10, 2014

Punishment and Place of Confinement: 3 YEARS TDCJID

Total Amount of Restitution/Reparation: \$ 180.00

Restitution To Be Paid To: ELLIS COUNTY COMMUNITY SUPERVISION AND
CORRECTIONS

Time Credited: 107 DAYS

THIS SENTENCE IS TO BE SERVED CONCURRENT WITH ANY OTHER
SENTENCE UNLESS OTHERWISE SPECIFIED.

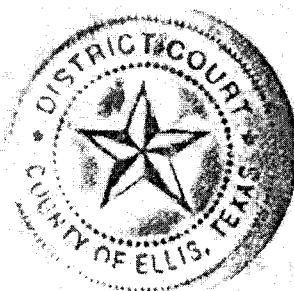
PAGE ONE OF FOUR

CERTIFIED A TRUE COPY

MELANIE REED

District Clerk, Ellis County, Texas

ATTEST: 8-14-14 pgs 4
E. Ruiz Deputy



CAUSE NO. 39171CR

THE STATE OF TEXAS VS. THOMAS GILMORE STEWART

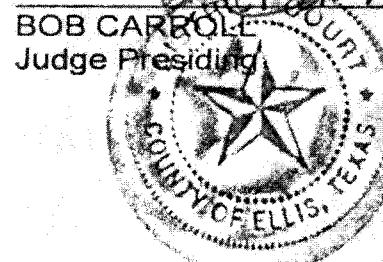
On the date stated above, the above numbered and entitled cause was reached and called for trial, and the State appeared by the attorney stated above and the Defendant and the Defendant's attorney, and the State's attorney agreed in open court and in writing to waive a jury in the trial of this cause and to submit it to the Court. The Court consented to the waiver of a jury herein. The Defendant further waived the reading of the indictment and, upon being asked by the Court as to how the Defendant pleaded, entered a plea of guilty to **POSSESSION OF CONTROLLED SUBSTANCE**. Thereupon, the Defendant was competent to stand trial and that the Defendant was not influenced in making said plea by any consideration of fear or by any persuasion prompting a confession of guilt, the free and voluntary plea of guilty was received by the Court and is now entered of record in the minutes of the Court as the plea of the Defendant. The Court, having heard all evidence from the State and the Defendant, and having heard argument of counsel for both parties, found that there was sufficient evidence to support the Defendant's plea and found the Defendant guilty of the offense stated above.

It is, therefore, ORDERED, ADJUDGED AND DECREED by the Court that the Defendant is guilty of the offense stated above, and, the Court having reviewed the presentence investigation report, the punishment is fixed as determined by the Court, and the State of Texas do have and recover of said Defendant all court costs in this prosecution expended for which execution will issue.

And thereupon the Court asked the Defendant whether the Defendant has anything to say why said sentence should not be pronounced upon said Defendant, and the Defendant answered nothing in bar thereof. Whereupon the Court proceeded, in the presence of said Defendant and the Defendant's attorney, to pronounce sentence upon said Defendant as follows: **3 YEARS TDCJID AND NO FINE**.

It is ORDERED by the Court that the Defendant, who has been adjudged guilty of the offense stated above, be and is hereby sentenced to the punishment stated above. The Defendant shall be taken by the authorized agent of the State of Texas or by the Sheriff and by him safely conveyed and delivered to the Director of the institutional division of the Texas Department of Criminal Justice, there to be imprisoned in the manner and for the period aforesaid. The Defendant is hereby remanded to the custody of the Sheriff, until such time as the Sheriff can obey the directions of this sentence.

SIGNED THIS 18 DAY OF July 2014.



Notice of Appeal: **WAIVED**
PAGE TWO OF FOUR

CAUSE NO. 39171CR
THE STATE OF TEXAS VS. THOMAS GILMORE STEWART

THE STATE OF TEXAS
COUNTY OF ELLIS

I, Melanie Reed, Clerk of the 40th Judicial District Court within and for the County and State aforesaid, hereby certify that the foregoing contains a true and correct copy of the Judgment in Cause No. 39171CR, entitled the State of Texas vs. **THOMAS GILMORE STEWART** as the same appears of record in this office in the Criminal Minutes of said Court.

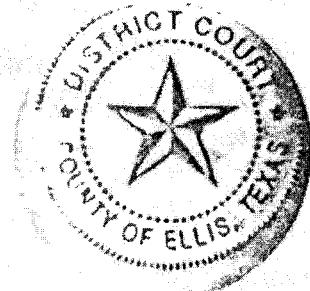
IN WITNESS WHEREOF, I hereto set my hand and seal of office this

7/18/14

MELANIE REED
Ellis County District Clerk
109 South Jackson St.
Waxahachie, Texas 75165

By: Melanie Reed
Deputy

PAGE THREE OF FOUR



FILED FOR RECORD

2014 JUL 18 CAUSE NO. 39171CR

THE STATE OF TEXAS
vs.
MELANIE REED
DISTRICT CLERK
ELLIS COUNTY, TX

40TH DISTRICT COURT

Stewart, Thomas

ELLIS COUNTY, TEXAS

CERTIFICATE OF THUMBPRINT

THIS IS TO CERTIFY THAT THE THUMBPRINT BELOW IS THE ABOVE NAMED DEFENDANT'S THUMBPRINT TAKEN AT THE TIME OF DISPOSITION OF THE ABOVE STYLED AND NUMBERED CAUSE.

DONE IN COURT THIS 10 DAY OF July, 2014

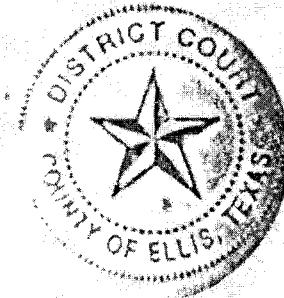
Casey Johnson #246
BAILIFF/DEPUTY SHERIFF

*Indicate here if print other than defendant's right thumbprint is used:

Left thumbprint Left/right index finger Other _____

Right Thumb

Stewart
DEFENDANT'S SIGNATURE



CAUSE NO. 39171 CR
DA# 01-13862

THE STATE OF TEXAS
V.
THOMAS GILMORE STEWART

OFFENSE: POSSESSION CONTROLLED
SUBSTANCE

OFFENSE CODE: 35990015

FILED FOR RECORD

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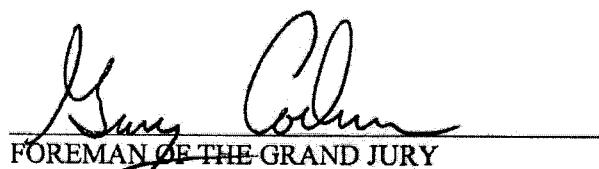
MELANIE REED
DISTRICT CLERK
ELLIS COUNTY, TX

§ (This Space For Clerk's Use)

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

The Grand Jurors, duly selected, organized, sworn and impaneled as such for the County of Ellis, State of Texas, at the JANUARY 2014 Term of the 40th Judicial District Court for said County, upon their oaths present in and to said Court that on or about March 25, 2014, and before the presentment of this indictment, in the County and State aforesaid, THOMAS GILMORE STEWART did then and there intentionally or knowingly possess a controlled substance, namely, methamphetamine, in an amount of one gram or more but less than four grams;

AGAINST THE PEACE AND DIGNITY OF THE STATE



FOREMAN OF THE GRAND JURY

CERTIFIED A TRUE COPY
MELANIE REED
District Clerk, Ellis County, Texas
ATTEST: 8-14-14 pgs 1
E. Ruiz Deputy