

No. ___-

IN THE SUPREME COURT OF THE UNITED STATES

OREE ROBERSON,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

APPENDIX

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Appendix A Judgment and Sentence of the United States District Court for the Northern District of Texas

Appendix B Judgment and Opinion of Fifth Circuit

APPENDIX A

United States District Court

Northern District of Texas
Fort Worth Division

UNITED STATES OF AMERICA

§

v.

§

Case Number: 4:17-CR-112-A(01)

OREE ROBERSON

§

CLERK, U.S. DISTRICT COURT
By _____ Deputy

NOV - 3 2017

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney John Bradford. The defendant, OREE ROBERSON, was represented by Federal Public Defender through Assistant Federal Public Defender Leandro Delgado.

The defendant pleaded guilty on July 19, 2017 to the one count information filed on July 12, 2017. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

<u>Title & Section / Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C) Distribution of a Controlled Substance	March 8, 2017	1

As pronounced and imposed on November 3, 2017, the defendant is sentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 180 months.

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

SUPERVISED RELEASE

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years and that while on supervised release, the defendant shall comply with the following conditions:

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not unlawfully possess a controlled substance.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. The defendant shall refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill.
5. The defendant shall participate in mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered at a rate of at least \$25 per month.
6. The defendant shall participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered at the rate of at least \$25 per month.
7. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district where the defendant is being supervised without the permission of the Court or U.S. Probation Officer.

5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.
6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support his dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by 18 U.S.C. § 3583(f).

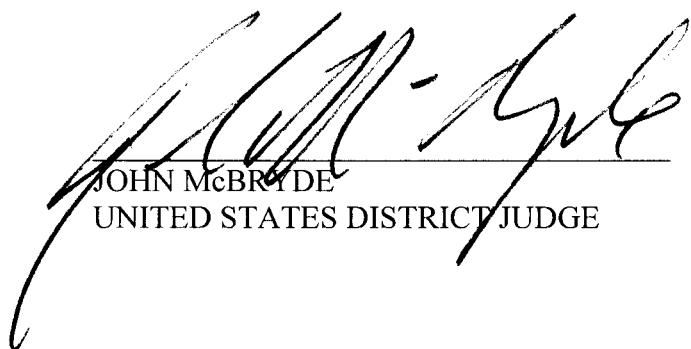
FINE

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 3rd day of November, 2017.



JOHN McBRYDE
UNITED STATES DISTRICT JUDGE

RETURN

I have executed the imprisonment part of this Judgment as follows:

Defendant delivered on _____, 2017 to _____
at _____, with a certified copy of this Judgment.

United States Marshal for the
Northern District of Texas

By _____
Deputy United States Marshal

APPENDIX B

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

United States Court of Appeals
Fifth Circuit

FILED

August 31, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

OREE ROBERSON,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:17-CR-112-1

Before STEWART, Chief Judge, and OWEN and COSTA, Circuit Judges.

PER CURIAM:*

Orree Roberson appeals the above-guidelines sentence of 180 months imposed following his guilty plea conviction for distribution of a controlled substance. He argues that the district court erred in imposing a two-level enhancement under U.S.S.G. § 2D1.1(b)(1) based on its finding that he possessed a firearm during the offense because the information in the Presentence Report (PSR) was insufficient to support a finding by a

* 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.

preponderance of the evidence that he possessed a firearm. He also challenges the adequacy of the district court's reasons for rejecting his request for a downward variance.

The PSR provided that a confidential source provided agents with Roberson's address and told agents that he distributed methamphetamine and heroin in the Fort Worth area, that he was a convicted felon, and that he was known to possess a firearm on his person or in his Honda Accord vehicle during drug transactions. At the direction of the agents, the confidential source contacted Roberson to arrange for controlled purchases of methamphetamine. An undercover agent then made several controlled purchases from Roberson and observed that he drove a Honda Accord to or from the transactions, and he was later determined to be a felon, corroborating the source's information. After one of these purchases, the undercover agent felt a bulge protruding from the right side of Roberson's hip area, which he believed to be a firearm. Roberson did not show that the PSR lacked sufficient indicia of reliability or present any evidence to establish that the information in the PSR was "materially untrue." *See United States v. Nava*, 624 F.3d 226, 230-31 (5th Cir. 2010). In view of the information obtained from the confidential source and the undercover agent, the district court's finding that Roberson possessed a firearm was plausible in light of the record as a whole. *See United States v. Romans*, 823 F.3d 299, 317 (5th Cir. 2016).

Next, Roberson asserts that the sentence is procedurally unreasonable because the district court did not give reasons for denying his nonfrivolous motion for a downward variance. Because Roberson did not raise this specific argument in the district court, review is limited to plain error. *See United States v. Mondragon-Santiago*, 564 F.3d 357, 361 (5th Cir. 2009). The district court considered the PSR, Roberson's motion, the Government's response, the

parties' arguments at sentencing, and Roberson's allocution. The court expressed concern about Roberson's criminal history, which began when he was 17 years old and included convictions for numerous drug offenses, unauthorized use of a motor vehicle, and assault with bodily injury to a family member; it also found that Roberson received light sentences for his previous convictions. The district court stated that a sentence within the advisory guidelines range would not adequately and appropriately address all of the 18 U.S.C. § 3553(a) factors and that a sentence of 180 months of imprisonment would be appropriate. Although the district court did not give specific reasons for denying Roberson's motion, the district court's reasons overall were adequate. *See Rita v. United States*, 551 U.S. 338, 359 (2007); *United States v. Rodriguez*, 523 F.3d 519, 525-26 (5th Cir. 2008). At the least, any error was not clear or obvious. Further, Roberson has not shown that any such error affected his substantial rights as he has not explained how the sentence might have differed had the district court provided a more detailed explanation for the sentence imposed. *See Mondragon-Santiago*, 564 F.3d at 365.

AFFIRMED.