No. 18-7140

IN THE SUPREME COURT OF THE UNITED STATES

TOMMY RAY HULL, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

1. Whether the court of appeals correctly reviewed for plain error petitioner's claim that the district court inadequately explained its imposition of a term of imprisonment for petitioner's violation of the terms of his supervised release, when petitioner failed to object in the district court to the adequacy of that explanation.

2. Whether the court of appeals correctly reviewed for plain error petitioner's claim that the district court imposed a substantively unreasonable term of imprisonment for petitioner's violation of the terms of his supervised release, when petitioner failed to object in the district court to that term of imprisonment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. B1-B3) is not published in the Federal Reporter but is reprinted at 738 Fed. Appx. 313. The order of the district court (Pet. App. A1) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 20, 2018. The petition for a writ of certiorari was filed on December 19, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Northern District of Texas, petitioner was convicted of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2). C.A. R.E. 20. He was sentenced to 41 months of imprisonment, to be followed by three years of supervised release. Id. at 21-22. After petitioner was released from custody, the district court found that he had violated the terms of his supervised release, revoked his supervised release, and ordered a 24-month term of imprisonment, to be followed by one year of supervised release. Gov't C.A. Br. 3-4. After petitioner served that term of imprisonment and was released from custody, the district court found that he had again violated the terms of his supervised release, revoked his supervised release, and ordered an 18-month term of imprisonment, with no additional supervised release to follow. Pet. App. A1; see Gov't C.A. Br. 4-5. The court of appeals affirmed. Pet. App. B1-B3.

1. In 2008, law enforcement officers stopped petitioner's truck and discovered an outstanding warrant for his arrest. Gov't C.A. Br. 3. They arrested him and conducted a search of the truck. Ibid. During the search, the officers found a stolen shotgun as well as items that had been reported stolen in a burglary the night before. Ibid.

A federal grand jury returned an indictment charging petitioner with possession of a firearm by a felon, in violation

of 18 U.S.C. 922(g)(1). C.A. R.E. 16. Petitioner pleaded guilty, and the district court sentenced him to 41 months of imprisonment, to be followed by three years of supervised release. Id. at 21-22. In September 2013, petitioner was released from custody and began his term of supervised release. Gov't C.A. Br. 3.

In November 2014, the district court revoked petitioner's supervised release, after petitioner admitted to violating the terms of his supervised release by committing two thefts. Gov't C.A. Br. 3-4. The court ordered a 24-month term of imprisonment, to be followed by one year of supervised release. Id. at 4. Petitioner appealed the judgment revoking his supervised release and ordering reimprisonment; that appeal was dismissed after petitioner's counsel stated that the appeal presented no non-frivolous issue for appellate review. 613 Fed. Appx. 351.

In March 2017, petitioner was released from custody and began his new term of supervised release. Gov't C.A. Br. 4.

2. In December 2017, the district court again revoked petitioner's supervised release, after petitioner admitted to violating the terms of his supervised release by using marijuana and by failing to report to his probation officer as directed. Gov't C.A. Br. 4; see Revocation Hr'g Tr. (Tr.) 3. The Probation Office calculated a recommended range of imprisonment of eight to 14 months under the applicable policy statement of the Sentencing Guidelines. Gov't C.A. Br. 4; see Sentencing Guidelines § 7B1.4(a), p.s. At the revocation hearing, petitioner's counsel

described petitioner's family and work circumstances and asked the court to "consider a sentence within the policy statement range given the circumstances." Tr. 5; see Tr. 4-5. The government did not present additional evidence or argument. Tr. 3.

The district court ordered an 18-month term of imprisonment, with no additional term of supervised release to follow. Tr. 6. The court explained that it had reviewed the revocation motion, that petitioner had admitted that the allegations in the motion were true, and that it agreed with the Probation Office's categorization of the violation. Tr. 5-6. The court further explained that it believed an 18-month sentence would appropriately "address[] the issues of adequate deterrence and protection of the public." Tr. 6. Petitioner did not object to the sentence or to the court's explanation. See Tr. 5-6.

3. On appeal, petitioner for the first time challenged his term of imprisonment as both procedurally and substantively unreasonable. Pet. App. B1. The court of appeals affirmed in an unpublished per curiam decision. Id. at B1-B3.

The court of appeals observed that, because petitioner "did not object to either the procedural or substantive reasonableness of the sentence imposed in the district court, review is for plain error only." Pet. App. B1-B2 (citing United States v. Whitelaw, 580 F.3d 256, 259-260 (5th Cir. 2009)). With respect to petitioner's procedural-reasonableness challenge, the court explained that, if a district court imposes a revocation term that

falls outside of the range recommended by the Sentencing Commission's policy statement, it must provide "some explanation for its decision," id. at B2 (quoting Whitelaw, 580 F.3d at 261-262), and must articulate reasons sufficient to enable appellate review, ibid. (citing Rita v. United States, 551 U.S. 338, 356-357 (2007)). The court determined that the district court's reasons in this case, though "brief," "were adequate in light of the revocation record as a whole and the explanation did not give rise to any clear or obvious procedural error that affect[ed] [petitioner's] substantial rights or the integrity of the judicial proceedings." Ibid.

With respect to petitioner's substantive-reasonableness challenge, the court of appeals explained that petitioner's "violations of the conditions of his supervised release soon after being released from custody on two occasions provided a reasonable basis for the above-guidelines-range sentence," observing that it had "routinely" upheld revocation terms exceeding the recommended range. Pet. App. B2-B3 (citing United States v. Warren, 720 F.3d 321, 332 (5th Cir. 2013)). The court determined that the "record does not reflect that the district court committed a clear or obvious error that affected [petitioner's] substantial rights or the integrity of judicial proceedings in imposing the above-guidelines sentence." Ibid.

ARGUMENT

Petitioner contends (Pet. 7-11) that the court of appeals erred in applying plain-error review to his claims that the district court did not adequately explain his 18-month revocation term and that the term was substantively unreasonable. As a threshold matter, petitioner's challenge to his term of imprisonment does not warrant this Court's review because he is scheduled for release in six weeks, which will moot his claims. In any event, petitioner's challenge to the application of plain-error review to his procedural-reasonableness claim (Pet. 7-10) lacks merit, and this Court has repeatedly declined to address the minimal circuit division that exists on that question. In addition, this case would be a poor vehicle for addressing that question because it arises in the context of a term of imprisonment ordered following the revocation of supervised release, rather than in the context of the imposition of a sentence. And although the court of appeals incorrectly applied plain-error review to petitioner's substantive-reasonableness claim (Pet. 10-11), application of that standard did not affect the outcome of petitioner's case.

1. This case will soon be moot when petitioner's 18-month term of imprisonment expires. According to the Federal Bureau of Prisons, petitioner is scheduled to be released on April 5, 2019. See Fed. Bureau of Prisons, Find an Inmate, https://www.bop.gov/inmateloc (last visited Feb. 21, 2019) (search for register number

39226-177). Because petitioner's challenge affects only the length of his revocation term rather than his underlying conviction, the case will become moot on that date. See Lane v. Williams, 455 U.S. 624, 631 (1982) ("Since respondents elected only to attack their sentences, and since those sentences expired during the course of these proceedings, this case is moot.").

The completion of a criminal defendant's sentence will not normally moot an appeal challenging the conviction because criminal convictions generally have "continuing collateral consequences" beyond just the sentences imposed. Spencer v. Kemna, 523 U.S. 1, 8 (1998). But a "presumption of collateral consequences" does not extend beyond criminal convictions. Id. at 12. Therefore, when a defendant challenges only the length of his term of imprisonment, his completion of that prison term moots an appeal, unless the defendant can show that the challenged action continues to cause "collateral consequences adequate to meet Article III's injury-in-fact requirement," id. at 14, and that those consequences are "'likely to be redressed by a favorable judicial decision,'" id. at 7 (citation omitted). Petitioner cannot make that showing here. Indeed, at the completion of his revocation term, petitioner will no longer be subject even to supervised release. Tr. 6.

2. Review would be unwarranted in any event.

a. In order to preserve a claim for appellate review, a defendant must object to an allegedly erroneous district court

ruling at the time the ruling "is made or sought," and must inform the district court "of the action the [defendant] wishes the court to take, or the [defendant's] objection to the court's action and the grounds for that objection." Fed. R. Crim. P. 51(b). A claim that is not preserved in that manner is subject to review only for plain error. Fed. R. Crim. P. 52(b). Because petitioner did not inform the district court that he believed the court's explanation was inadequate, the court of appeals correctly reviewed for plain error petitioner's belated claim that the district court failed to adequately explain its revocation sentence.

In United States v. Vonn, 535 U.S. 55 (2002), this Court applied plain-error review to a claim that a trial court had failed to conduct an adequate guilty-plea colloquy. The Court explained that "the point of the plain-error rule" is "always" that "the defendant who just sits there when a mistake can be fixed" cannot "wait to see" whether he is satisfied with the judgment, and, if not, complain to the court of appeals. Id. at 73. Instead, a defendant must raise a contemporaneous objection, which ensures that "the district court can often correct or avoid [a] mistake." Puckett v. United States, 556 U.S. 129, 134 (2009); see Vonn, 535 U.S. at 72 (noting the benefits of "concentrat[ing] * * * litigation in the trial courts, where genuine mistakes can be corrected easily").

The reasons for requiring a contemporaneous objection under Federal Rule of Criminal Procedure 51(b) apply with full force to

claims like petitioner's. A district court that is alerted to the possibility that a defendant views its explanation as insufficient may well supplement that explanation. Even a court that believes its existing explanation already suffices may choose to add more detail to satisfy an inquiring defendant or to obviate the need for an appeal and potential remand. A deficient explanation is thus precisely the sort of error that can be, and should be, corrected by the district court in the first instance. Indeed, in United States v. Booker, 543 U.S. 220 (2005), this Court confirmed that, in the context of imposing a sentence, the courts of appeals would continue to apply "ordinary prudential doctrines, * * * [such as] whether the issue was raised below and whether it fails the 'plain-error' test," when reviewing an advisory Guidelines sentence for reasonableness. Id. at 268.

b. Petitioner contends (Pet. 8-10) that the court of appeals' application of plain-error review to his claim that the district court failed to adequately explain its decision conflicts with this Court's recent decision in Chavez-Meza v. United States, 138 S. Ct. 1959, 1966 (2018). That contention is mistaken.

In Chavez-Meza, this Court determined that a district court's explanation for a sentencing modification under 18 U.S.C. 3582(c)(2) was adequate. 138 S. Ct. at 1967-1968. The Court did not address the question of whether a criminal defendant must object to the adequacy of a sentencing explanation under 18 U.S.C. 3553(c) to preserve that claim for appellate review. Indeed, in

Chavez-Meza, this Court did not decide that 18 U.S.C. 3553(c)'s statutory sentence-explanation requirements apply at all to sentencing modifications under Section 3582(c)(2). Rather, it assumed "purely for argument's sake" that "district courts have equivalent duties when initially sentencing a defendant and when later modifying that sentence," and held that the explanation provided by the district court sufficed. 138 S. Ct. at 1955; see Dillon v. United States, 560 U.S. 817, 825 (2010) (explaining that Section 3582(c)(2) "does not authorize a sentencing or resentencing proceeding").

Petitioner asserts (Pet. 8-9) that the Court in Chavez-Meza nevertheless implicitly suggested that procedural-reasonableness challenges need not be preserved by express objection because "this Court offered plenary review of the defendant's failure-to-explain claim, even though there is no evidence that Chavez-Meza ever objected to the procedural reasonableness of the sentence." Unlike in petitioner's case, however, the district court in Chavez-Meza did not hold a hearing before entering an order modifying the defendant's sentence under 18 U.S.C. 3582(c)(2). See 138 S. Ct. at 1965. Chavez-Meza thus arguably fell within the exception in Rule 51(b) that, "[i]f a party does not have an opportunity to object to a ruling or order, the absence of an objection does not later prejudice that party," Fed. R. Crim. P. 51(b), and the government did not argue that he had forfeited his claim. Petitioner, by contrast, appeared before the district court, and

his failure to object to the court's sentence, see Tr. 5-6, remains subject to Rule 51(b)'s ordinary requirement of a contemporaneous objection.

Petitioner also observes that "this Court in Chavez-Meza explained that courts of appeal may order limited remands to obtain fuller explanation of [a] sentence 'even when there is little evidence in the record affirmatively showing that the sentencing judge failed to consider the § 3553(a) factors.'" Pet. 9 (quoting Chavez-Meza, 138 S. Ct. at 1965). Even assuming that supervised-release revocation proceedings like his should be treated identically, that possibility does not help petitioner. It means that, "[i]f the court of appeals considers an explanation inadequate in a particular case, it can send the case back to the district court for a more complete explanation." Chavez-Meza, 138 S. Ct. at 1965-1966 (emphasis added). It does not mean that a court of appeals must send the case back where, as here, it considers an explanation adequate in a particular case.

c. Petitioner also contends (Pet. 9-10) that the court of appeals' application of plain-error review to an unpreserved claim of procedural sentencing error conflicts with decisions of other courts of appeals. Although some disagreement exists in the courts of appeals about whether an unpreserved challenge to the adequacy of a district court's sentencing explanation is reviewed for plain error, that disagreement is narrower than petitioner suggests and does not warrant this Court's review.

A clear majority of the courts of appeals agree that, in the context of an original sentence on conviction, plain-error review applies when a defendant does not object to the district court's failure to explain a sentence. See United States v. Flores-Mejia, 759 F.3d 253, 256 (3d Cir. 2014) (en banc); United States v. Rangel, 697 F.3d 795, 805 (9th Cir. 2012), cert. denied, 568 U.S. 1182 (2013); United States v. Rice, 699 F.3d 1043, 1049 (8th Cir. 2012); United States v. Coronoa-Gonzales, 628 F.3d 336, 340 (7th Cir. 2010); United States v. Wilson, 605 F.3d 985, 1033–1034 (D.C. Cir.) (per curiam), cert. denied, 562 U.S. 1116, and 562 U.S. 1117 (2010); United States v. Mondragon-Santiago, 564 F.3d 357, 361 (5th Cir.), cert. denied, 558 U.S. 871 (2009); United States v. Mangual-Garcia, 505 F.3d 1, 15 (1st Cir. 2007), cert. denied, 553 U.S. 1019 (2008); United States v. Vonner, 516 F.3d 382, 385–386 (6th Cir.) (en banc), cert. denied, 555 U.S. 816 (2008); United States v. Villafuerte, 502 F.3d 204, 211 (2d Cir. 2007).

Petitioner suggests that the Seventh Circuit does not require a contemporaneous objection to preserve a claim that the district court provided an inadequate explanation of its sentence. Pet. 9 (citing United States v. Cunningham, 429 F.3d 673, 675-680 (7th Cir. 2005)). But the Seventh Circuit has since expressly stated that, where a defendant "did not object to [an] alleged procedural deficiency at the time of sentencing, [it] review[s] for plain error." Corona-Gonzalez, 628 F.3d at 340.

Petitioner correctly notes (Pet. 9) that the Fourth Circuit has not required a contemporaneous objection to preserve a claim that the district court provided an inadequate explanation of its sentence. In the context of a sentence imposed on conviction, the Fourth Circuit's decision in United States v. Lynn, 592 F.3d 572 (2010), treated a claim of procedural error as preserved without a separate objection. See id. at 578 ("By drawing arguments from § 3553 for a sentence different than the one ultimately imposed, an aggrieved party sufficiently alerts the district court of its responsibility to render an individualized explanation addressing those arguments, and thus preserves its claim.").[1] But this Court has repeatedly declined to review that issue following the decision in Lynn. See, e.g., Rangel v. United States, 568 U.S. 1182 (2013) (No. 12-8088); Reyes v. United States, 568 U.S. 1030 (2012) (No. 12-5032); Villarreal-Pena v. United States, 565 U.S. 1236 (2012) (No. 11-7084); Satchell v. United States, 565 U.S. 1204 (2012) (No. 11-6811); McClain v. United States, 565 U.S. 1159 (2012) (No. 11-5738); Alcorn v. United States, 565 U.S. 1159 (2012) (No. 11-5024); Mora-Tarula v. United States, 565 U.S. 1156 (2012) (No. 10-11209); Williams v. United States, 565 U.S. 931 (2011) (No. 10-9941); Hoffman-Portillo v. United States, 565 U.S. 918 (2011) (No.

[1] The Eleventh Circuit has also stated that challenges to a district court's compliance with 18 U.S.C. 3553(c) are reviewed de novo, but has done so in decisions that pre-date Gall v. United States, 552 U.S. 38 (2007), and Rita v. United States, 551 U.S. 338 (2007). See United States v. Bonilla, 463 F.3d 1176, 1181 (11th Cir. 2006) (citing United States v. Williams, 438 F.3d 1272, 1274 (11th Cir.) (per curiam), cert. denied, 549 U.S. 891 (2006)).

11-5656); Wilson v. United States, 562 U.S. 1116 (2010) (No. 10-7456). Petitioner identifies no reason for a different result here.[2]

d. Indeed, this case would be a poor vehicle to address the question, as different standards may apply to the adequacy of an explanation for a term of imprisonment ordered upon revocation of supervised release, as here, and a sentence imposed upon conviction, as in most of the decisions on which petitioner relies.

A revocation proceeding is not the imposition of a sentence; it is governed by 18 U.S.C. 3583 rather than 18 U.S.C. 3553. Thus, the explanation requirements of Section 3553(c) do not directly apply. Courts of appeals have reasoned that an explanation requirement in the revocation context -- if any -- is less than it would be under Section 3553(c). See United States v. Verkhoglyad, 516 F.3d 122, 133 (2d Cir. 2008) (reasoning that a "court's statement of its reasons for going beyond non-binding policy statements in imposing a sentence after revoking a defendant's supervised release term need not be as specific") (internal quotation marks omitted); United States v. White Face, 383 F.3d 733, 740 (8th Cir. 2004) ("A district court need not mechanically list every § 3553(a) consideration when sentencing a defendant upon revocation of supervised release."); United States v. Garner, 133 Fed. Appx. 319, 320-321 (7th Cir. 2005) ("The enactments

[2] The question presented here is also presented by the petition in Smith v. United States, No. 18-6237 (filed Oct. 4, 2018).

governing revocation, see 18 U.S.C. §§ 3583(c), (g); Fed. R. Crim. P. 32.1, do not require a written statement of reasons and do not reference § 3553(c)(2).”). And the Fifth Circuit has “repeatedly affirmed above-range revocation sentences where the district court, without any additional explanation, explicitly identified deterrence and protection of the public as the reasons for imposing the sentence.” United States v. Salinas, 684 Fed. Appx. 408, 410 (per curiam) (citing cases), cert. denied, 138 S. Ct. 206 (2017); see also United States v. Priestley, 618 Fed. Appx. 222, 223 (5th Cir. 2015) (per curiam) (finding “no error, plain or otherwise,” in similar explanation), cert. denied, 136 S. Ct. 922 (2016); United States v. Sanchez-Valle, 554 Fed. Appx. 272, 274 (5th Cir. 2014) (per curiam) (“[W]e do not require district courts to state explicitly the reasons for selecting a revocation sentence.”). Petitioner has not shown any likelihood that he would have prevailed even if the court of appeals had not applied plain-error review, and the atypical context would interfere with consideration of the question presented.

3. Petitioner separately contends (Pet. 10-11) that this Court’s review is warranted to resolve a conflict among the courts of appeals about whether a defendant must object at sentencing in order to preserve a claim that his sentence was substantively unreasonable. Although the court of appeals incorrectly reviewed petitioner’s substantive-reasonableness challenge for plain error, that determination had no effect on the outcome of petitioner’s

case. Further review is thus unwarranted on this question, as well.

Petitioner correctly notes (Pet. 11) that the Fifth Circuit, unlike some other courts of appeals, has held that a defendant must object to a sentence's substantive reasonableness in the district court to properly preserve that claim for appeal. See United States v. Peltier, 505 F.3d 389, 391-392 (5th Cir. 2007), cert. denied, 554 U.S. 921 (2008); see also, e.g., United States v. Autery, 555 F.3d 864, 870-871 (9th Cir. 2009) (citing cases examining this issue). That practice of applying plain-error review to substantive-reasonableness claims misconstrues Rule 51(a)'s contemporaneous-objection requirement. When a defendant argues for a given sentence and the district court imposes a different sentence, the defendant has already put the court on notice of his objection to the length of the sentence and so -- in accord with Rule 51(a) -- need not repeat that objection after the court announces the sentence.

Nevertheless, the Fifth Circuit has required a contemporaneous reasonableness objection for more than 11 years. See Peltier, 505 F.3d at 391-392. Such objections are now routine practice in the district courts in that circuit. See, e.g., United States v. Key, 599 F.3d 469, 473 (5th Cir. 2010), cert. denied, 562 U.S. 1182 (2011); United States v. Ocampo-Mejia, 321 Fed. Appx. 380, 381 (5th Cir. 2009) (per curiam). And during that 11-year period, this Court has

denied a number of petitions raising that question in cases from the Fifth Circuit. See, e.g., Rodriguez-Flores v. United States, 136 S. Ct. 101 (2015) (No. 14-10126); Garcia-Gonzalez v. United States, 135 S. Ct. 120 (2014) (No. 13-10465); Correa-Huerta v. United States, 573 U.S. 912 (2014) (No. 13-10114); Medearis v. United States, 572 U.S. 1072 (2014) (No. 13-9149); Martinez-Canada v. United States, 572 U.S. 1063 (2014) (No. 13-8318); Zubia-Martinez v. United States, 572 U.S. 1004 (2014) (No. 13-7236); Berrios-Ramirez v. United States, 572 U.S. 1063 (2014) (No. 13-8203); Lester-Ochoa v. United States, 571 U.S. 862 (2013) (No. 12-10676); Moreno-Hernandez v. United States, 568 U.S. 1204 (2013) (No. 12-8409); Garcia-Ramirez v. United States, 568 U.S. 1092 (2013) (No. 12-5842); Hernandez-Ochoa v. United States, 568 U.S. 1093 (2013) (No. 12-6223); Minora-Escarcega v. United States, 568 U.S. 1031 (2012) (No. 12-5978); Castillo-Quintanar v. United States, 568 U.S. 1026 (2012) (No. 11-10499); Perez v. United States, 568 U.S. 1025 (2012) (No. 11-9353).

The same result is appropriate in this case. Even without application of the plain-error standard, petitioner's revocation sentence was substantively reasonable. Even "[w]hen the defendant properly preserves his objection for appeal," the court of appeals reviews "a sentence imposed on revocation of supervised release under a 'plainly unreasonable' standard, in a two-step process." The court has described its "plainly unreasonable" standard of review as a "more deferential standard" than the standard that

applies to appellate review of original sentences following conviction for a substantive offense. United States v. Miller, 634 F.3d 841, 843 (5th Cir.), cert. denied, 565 U.S. 976 (2011). And even as to an original sentence, the court reviews "a preserved objection to a sentence's substantive reasonableness for an abuse of discretion, examining the totality of the circumstances." Warren, 720 F.3d at 332. That "deferential review is informed by the knowledge that '[t]he sentencing judge has access to, and greater familiarity with, the individual case and the individual defendant before him.'" Ibid. (quoting Gall v. United States, 552 U.S. 38, 51-52 (2007)).

The 18-month term of imprisonment that the district court imposed in this case was not unreasonable under either standard. That term is four months above the sentencing range that the Sentencing Commission's policy statement recommends. See Gov't C.A. Br. 4-5. The district court reasonably concluded that a slightly higher revocation sentence was necessary in this case for "adequate deterrence and protection of the public." Tr. 6. As the court of appeals explained, petitioner's "violations of the conditions of his supervised release soon after being released from custody on two occasions provided a reasonable basis for the above-guidelines-range sentence." Pet. App. B2-B3. That is particularly true in light of petitioner's extensive criminal history. See Gov't C.A. Br. 1-3; see also Tr. 6 (noting petitioner's criminal-history category of VI).

As the court of appeals observed, it has "routinely upheld revocation sentences exceeding the recommended range, even where the sentence is the statutory maximum." Pet. App. B3 (quoting Warren, 720 F.3d at 332); see, e.g., United States v. Mulcahy, 403 Fed. Appx. 894, 895 (5th Cir. 2010) (affirming a 36-month revocation sentence and explaining that "revocation sentences exceeding the guidelines range but not exceeding the statutory maximum have been upheld as a matter of routine against challenges that the sentences were substantively unreasonable"). Petitioner does not offer any reason to believe that the court would have done otherwise here. Because the court would have upheld petitioner's 18-month term regardless, the application of plain-error review had no effect on the disposition of this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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