

No. 19-_____

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL J. GALVAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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Northern District of Texas

APPENDIX A

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

No. 17-10761
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
November 26, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MICHAEL J. GALVAN,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:17-CR-30-1

Before REAVLEY, JONES, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Michael J. Galvan was convicted of one count of failing to register as a sex offender. The district court imposed a within-guidelines prison term of 18 months, to run consecutively to a not-yet-imposed state revocation sentence, as well as a five-year term of supervised release. On appeal, Galvan argues that his sentence is substantively unreasonable because the district court gave too much weight to his criminal history, which was already accounted for by

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the Guidelines, when deciding to run his sentence consecutively to his revocation sentence. The Government argues that plain error review applies because Galvan did not raise this exact issue before the district court.

We need not decide the standard of review issue because Galvan has shown no error, plain or otherwise, in connection with his sentence. The record shows that the district court considered the specifics of Galvan's case before deciding that a within-guidelines sentence running consecutively to Galvan's not-yet-imposed state revocation sentence was needed to satisfy the goals of 18 U.S.C. § 3553(a). The record thus shows that the district court acted properly. *See Gall v. United States*, 552 U.S. 38, 49-50 (2007). Galvan's arguments amount to no more than a disagreement with the district court's choice of sentence, which does not show error. *United States v. Ruiz*, 621 F.3d 390, 398 (5th Cir. 2010); *see Gall*, 552 U.S. at 51.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

MICHAEL J. GALVAN

Case Number: 4:17-CR-00030-O(01)

U.S. Marshal's No.: 55299-177

Aisha Saleem, Assistant U.S. Attorney

Cody Cofer, Attorney for the Defendant

On March 8, 2017 the defendant, MICHAEL J. GALVAN, entered a plea of guilty as to Count One of the Indictment filed on February 15, 2017. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2250	Failure to Register as a Sex Offender	November 1, 2016	One

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Indictment filed on February 15, 2017.

The defendant shall notify the United States Attorney for this district within thirty 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.

Sentence imposed June 26, 2017.


REED O'CONNOR
U.S. DISTRICT JUDGE

Signed June 26, 2017.

Judgment in a Criminal Case

Defendant: MICHAEL J. GALVAN

Case Number: 4:17-CR-00030-O(1)

IMPRISONMENT

The defendant, MICHAEL J. GALVAN, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Eighteen (18) months** as to Count One of the Indictment filed on February 15, 2017. This sentence shall run concurrently with any future sentence imposed in the related case pending before the El Paso County, Colorado, County Court, under Case No. 2016CR4770. Further, this sentence shall run consecutively to any future sentence imposed in the defendant's probation revocation pending before the El Paso County, Colorado, District Court Division 19, under Case No. 2016CR521.

The Court recommends to the BOP that the defendant be housed at an FCI facility within the Northern District of Texas area, if possible.

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **Five (5) years** as to Count One of the Indictment filed on February 15, 2017.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and 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;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) 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; and,

Judgment in a Criminal Case

Defendant: MICHAEL J. GALVAN

Case Number: 4:17-CR-00030-O(1)

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(13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

report in person to the U.S. Probation Office in the district to which the defendant is released from the custody of the Federal Bureau of Prisons within 72 hours of release;

have no contact with minors under the age of 18, including by correspondence, telephone, internet, electronic communication, or communication through third parties. The defendant shall not have access to or loiter near school grounds, parks, arcades, playgrounds, amusement parks or other places where children may frequently congregate, except as may be allowed upon advance approval by the probation officer;

register as a sex offender with state and local law enforcement as directed by the probation officer in each jurisdiction where the defendant resides, is employed, and is a student, providing all information required in accordance with state registration guidelines, with initial registration being completed within three business days after release from confinement. The defendant shall provide written verification of registration to the probation officer within three business days following registration and renew registration as required by his probation officer. The defendant shall, no later than three business days after each change of name, residence, employment, or student status, appear in person in at least one jurisdiction and inform that jurisdiction of all changes in the information required in the sex-offender registry;

participate in sex-offender treatment services as directed by the probation officer until successfully discharged, which services may include psycho-physiological testing to monitor the defendant's compliance, treatment progress, and risk to the community, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month;

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; and,

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Defendant: MICHAEL J. GALVAN

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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 (copayment) at the rate of at least \$25 per month.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

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 Marshal