

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ANTHONY ALEXANDER FERRARI,

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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Northern District of Texas

APPENDIX A

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

No. 18-10079
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 28, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

ANTHONY ALEXANDER FERRARI,

Defendant - Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:17-CR-122-1

Before BARKSDALE, ELROD, and HO, Circuit Judges.

PER CURIAM:*

Anthony Alexander Ferrari appeals his sentence for his guilty-plea conviction for possession of a controlled substance with intent to distribute, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C). Ferrari challenges the standard condition of his supervised release mandating he “permit a probation officer to visit [Ferrari] at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer”. Ferrari asserts:

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.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 condition allowing a probation officer to visit him at any time and place is substantively unreasonable, constitutionally overbroad, and a greater deprivation of liberty than reasonably necessary; and the court failed to explain its reasons for imposing the condition.

As Ferrari concedes, he did not raise these issues in district court; therefore, review is only for plain error. *E.g.*, *United States v. Broussard*, 669 F.3d 537, 546 (5th Cir. 2012). Under that standard, Ferrari must show a forfeited plain (clear or obvious) error that affected his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If he does so, we have the discretion to correct the reversible plain error, but should do so only if it “seriously affect[s] the, fairness, integrity or public reputation of judicial proceedings”. *Id.*

Our court has not addressed the constitutionality or substantive reasonableness of the challenged standard condition or whether a district court must explain its reasons for imposing a standard condition of supervised release. As the Government contends, and Ferrari concedes, other circuits have reached varying results. Therefore, even assuming error, it is not clear or obvious. *See United States v. Salinas*, 480 F.3d 750, 759 (5th Cir. 2007) (“Because this circuit’s law remains unsettled and the other federal circuits have reached divergent conclusions on this issue . . . [defendant] cannot satisfy the second prong of the plain error test—that the error be clear under existing law”). (citation omitted).

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 4:17-CR-00122-Y(1)

Frank L. Gatto, assistant U.S. attorney

ANTHONY ALEXANDER FERRARI

Cody Cofer, attorney for the defendant

On August 16, 2017, the defendant, Anthony Alexander Ferrari, entered a plea of guilty to count one of the one-count indictment. 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 CONCLUDED</u>	<u>COUNT</u>
21 U.S.C. §§ 841(a)(1) & (b)(1)(C)	Possession of Controlled Substance with Intent to Distribute	May 8, 2017	1

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

The defendant shall pay immediately a special assessment of \$100.00 for count one of the one-count indictment.

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 January 4, 2018.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed January 5, 2018.

IMPRISONMENT

The defendant, Anthony Alexander Ferrari, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 151 months on count one of the one-count indictment. The sentence shall run consecutively to any sentence that may be imposed in case no. F17-395-431 in the 431st Judicial District Court, Denton County, Texas.

The Court recommends that the defendant be incarcerated at a facility in the District of Montana, 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 three years on count one of the one-count indictment.

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 in a manner and frequency directed by the Court or probation officer;
- (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
- (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 probation officer;

Defendant: Anthony Alexander Ferrari

Case Number: 4:17-CR-00122-Y(1)

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report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Federal Bureau of Prisons;

refrain from any unlawful use of a controlled substance. The defendant shall submit 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;

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 \$50 per month; and

make all court-ordered child support payments on a timely basis, producing proof of payment to the probation officer within the first 5 days of each month, whether as a part of a written report required by the probation officer or otherwise.

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