

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DEREK RAY KING,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-10193
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 30, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DEREK RAY KING,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:11-CR-200-1

Before DAVIS, HAYNES and GRAVES, Circuit Judges.

PER CURIAM:*

Derek Ray King appeals the judgment revoking his second term of supervised release and sentencing him to a 10-month prison term and a 20-month term of supervised release. *See* 18 U.S.C. § 3583(e)(3). Pretermittting the question whether the district court infringed King's due process right of confrontation, we affirm on other bases supported by the record. *See United States v. Rodriguez*, 523 F.3d 519, 525 (5th Cir. 2008); *United States v. Ho*, 311

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

F.3d 589, 602 n.12 (5th Cir. 2002); *United States v. McCormick*, 54 F.3d 214, 219 n.3 (5th Cir. 1995). Additionally, we pretermitted deciding the standard of review for the statutory bases for our decision because we conclude that “the district court’s reasons were sufficient under any standard.” *Rodriguez*, 523 F.3d at 525.

First, revocation and imprisonment were mandatory because King conceded that he had tested positive for illegal substances more than three times in a year’s period. See § 3583(g)(4). The record offers no basis for concluding that the district court committed error of any kind in exercising the limited discretion granted by statute to forgo mandatory revocation for defendants on supervised release who fail drug testing. See § 3583(d); see also *United States v. Williams*, 847 F.3d 251, 254-55 (5th Cir.), cert. denied, 138 S. Ct. 192 (2017); *United States v. Minnitt*, 617 F.3d 327, 335-36 (5th Cir. 2010); *United States v. Smith*, 417 F.3d 483, 486-87 (5th Cir. 2005). King had been required to participate in substance abuse treatment since at least October 2012 and yet continued his abusive behavior, as shown by testing in April, May, June, and July of 2017. Second, revocation and imprisonment were mandatory because King conceded that he had violated the condition of his supervised release that he not possess illegal controlled substances. See § 3583(g)(1). And to such extent as King may be understood to argue that the district court was influenced in its sentence by the allegations of an addendum to the petition for revocation and the testimony related to those allegations, i.e., that his due process right of confrontation was infringed with regard to his revocation sentence, he is entitled to no relief. See *United States v. Beydown*, 469 F.3d 102, 108 (5th Cir. 2006).

AFFIRMED.

APPENDIX B

United States District Court

Northern District of Texas
Fort Worth Division

UNITED STATES OF AMERICA

**JUDGMENT IN A CRIMINAL CASE
for revocation of supervised release**

v.

DEREK RAY KING

Case number: 4:11-CR-200-Y (1)
Robert J. Boudreau, assistant U.S. attorney
Brook Antonio, attorney for the defendant


On March 26, 2019, a hearing was held, at which time the Court determined that the defendant, Derek Ray King, had violated his conditions of supervised release. Accordingly, the defendant is adjudged guilty of such violations, which involve the following conditions:

CONDITION	NATURE OF VIOLATION	VIOLATION CONCLUDED
Standard condition no. 7 and additional conditions	Using and possessing methamphetamine	November 2018, December 2018, January 2019; February 2019, March 2019
Additional conditions	Failure to pay restitution payments	November 2018, December 2018; January 2019

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

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

Sentence imposed March 26, 2019.



TERRY B. MEANS
UNITED STATES DISTRICT JUDGE

Signed March 27, 2019.

IMPRISONMENT

The defendant, Derek Ray King, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 12 months and 1 day, pursuant to USSG § 7B1.4(a), p.s.

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

SUPERVISED RELEASE

No further term of supervised release is imposed.

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