

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

EDWARD RAY CROSBY,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

INDEX TO APPENDICES

Appendix A Judgment and Opinion of Fifth Circuit

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

APPENDIX A

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

No. 18-10393
c/w No. 18-10394
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 14, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

EDWARD RAY CROSBY,

Defendant-Appellant

Appeals from the United States District Court
for the Northern District of Texas
USDC No. 3:12-CR-338-1
USDC No. 3:16-CR-405-1

Before DAVIS, HAYNES, and GRAVES, Circuit Judges.

PER CURIAM:*

Edward Ray Crosby pleaded guilty to being a felon in possession of a firearm and possession with intent to distribute a controlled substance. Based on these new law violations and others, the district court revoked Crosby's supervised release. The court sentenced Crosby to 120 months on the firearms count and 168 months on the drug count, to run concurrently, and to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

concurrent three-year terms of supervised release. Regarding the revocation, the court sentenced Crosby to 24 months in prison, with 12 months to run concurrently with the sentence on the new law counts and 12 months to run consecutively; the court did not impose an additional term of supervision.

Crosby argues that the district court plainly erred in determining that his Texas aggravated robbery convictions are crimes of violence as defined in U.S.S.G. § 4B1.2 for purposes of determining his base offense level under U.S.S.G. § 2K2.1(a)(2). He asserts that the offense of Texas robbery is broader than the generic definition of robbery and does not have the use of force as an element of the offense.¹

The Government has filed an unopposed motion for summary affirmance, asserting that the argument is foreclosed. Crosby correctly concedes that his argument is foreclosed by *United States v. Santiesteban-Hernandez*, 469 F.3d 376, 380-81 (5th Cir. 2006), *overruled on other grounds* by *United States v. Rodriguez*, 711 F.3d 541, 547-63 (5th Cir. 2013) (en banc). He raises the issue only to preserve it for further review; thus, summary affirmance is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, the Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.

¹Crosby does not raise any challenge to the revocation of his supervised release or the sentence imposed.

APPENDIX B

United States District Court

Northern District of Texas

Dallas Division

UNITED STATES OF AMERICA

v.

Case Number 3:12-CR-338-M (01)

EDWARD RAY CROSBY
Defendant.

USM Number: 45291-177

JUDGMENT IN A CRIMINAL CASE(For **Revocation** of Probation or Supervised Release)

(For Offenses Committed On or After November 1, 1987)

The defendant, EDWARD RAY CROSBY, was represented by Lara Meghan Wynn.

THE DEFENDANT:

The defendant, Edward Ray Crosby pled "true" as to a violation of Standard Condition No. 6, and three Mandatory Conditions, of the term of supervision.

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Date of Violation</u>
Violation No. II Standard Condition No. 6 Imposed on April 2, 2014	The defendant shall notify the probation officer at least 10 days prior to any change in residence or employment.	January 27, 2016
Violation No. III Mandatory Condition Imposed on April 2, 2014	The defendant shall not commit another federal, state, or local crime.	March 16, 2016
Violation No. III Mandatory Condition Imposed on April 2, 2014	The defendant shall not possess a firearm, ammunition, destructive device or any other dangerous weapon.	March 16, 2016
Violation No. III Mandatory Condition Imposed on April 2, 2014	The defendant shall not unlawfully possess a controlled substance.	March 16, 2016

Certified copy of the Judgment imposed on April 2, 2014, in the Northern District of Texas, Dallas Division, is attached.

As pronounced on March 9, 2018, the defendant is sentenced as provided in pages 1 through 2 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 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.

Signed this the 26 day of March, 2018.


BARBARA M.G. LYNN
CHIEF JUDGE

Defendant: EDWARD RAY CROSBY

Judgment--Page 2 of 2

Case Number: 3:12-CR-338-M (01)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **TWENTY-FOUR (24) MONTHS. Twelve (12) months of this sentence shall run consecutively to the sentence imposed in Case No. 3:16-CR-405-M (01), and Twelve (12) months of this sentence shall run concurrently to the sentence imposed in Case No. in 3:16-CR-405-M (01).**

The defendant violated standard condition No. 6 and three (3) mandatory conditions of his supervised release term imposed on April 2, 2014. **IT IS ORDERED** that the defendant's two (2) year term of supervised release, imposed on April 2, 2014, is **REVOKED**. (Certified copy of the Judgment in a Criminal Case, imposed on April 2, 2014, is attached.)

No further term of supervised release is imposed in this case.

The defendant shall remain in custody pending service of sentence.

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

v.

EDWARD RAY CROSBY

Defendant.

§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **3:16-CR-00405-M (01)**§ USM Number: **45291-177**§ **Lara Meghan Wynn**

§ Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	Counts 1 and 2 of the Indictment, filed on September 7, 2016.
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 922(g)(1), 924(a)(2) and 18 U.S.C. § 2 - Felon in Possession of a Firearm and Aiding and Abetting	03/16/2016	1
21 U.S.C. § 841(a)(1) & (b)(1)(C) and 18 U.S.C. § 2 - Possession with Intent to Distribute a Controlled Substance and Aiding and Abetting	03/16/2016	2

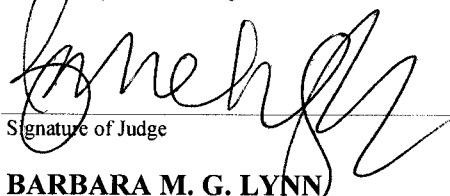
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)
- ☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 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. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

March 9, 2018

Date of Imposition of Judgment



Signature of Judge

BARBARA M. G. LYNN
CHIEF UNITED STATES DISTRICT JUDGE

Name and Title of Judge

3/24/18

Date

DEFENDANT: EDWARD RAY CROSBY
CASE NUMBER: 3:16-CR-00405-M (01)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **ONE HUNDRED-SIXTY EIGHT (168) Months. This term consists of 120 months on count 1 and 168 months on count 2 with said terms to run concurrently with each other, for a Total Aggregate Term of 168 months imprisonment. Further, this sentence shall run concurrent in part and consecutive in part to any sentence imposed upon the revocation of supervised release in Case No. 3:12-CR-338-M (01). See Judgment for Revocation of Supervised Release in 3:12-CR-338-M (01). Further, this sentence shall run consecutively to any sentences that may be imposed for revocation of probation in Case Nos. F-1223750 and F-1256322, pending in the 265th Judicial District Court of Dallas County, Dallas, Texas. Finally this sentence shall run concurrently with any sentences imposed in Case Nos. F-1623448 (Aggravated Robbery), F-1623444 (Possession of a Controlled Substance), No. F-1623443 (Unlawful Possession of a Firearm by Felon), pending in the 265th Judicial District Court of Dallas County, Dallas, Texas.**

It is the Court's intent for the defendant to receive a sentence adjustment to account for any time spent in custody beginning on March 16, 2016, that the Bureau of Prisons will not credit under 18 U.S.C. §3585(b). If the Court could order the sentences to run concurrently from that date, it would, so it is the Court's intention that the effect be the same as if the federal sentence ran concurrently from the date service of the state sentence began.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the Defendant participate in the Residential Drug and Alcohol Treatment Program, offered by the Bureau of Prisons, if eligible. Further, the Court recommends that the defendant be allowed to serve his sentence at FCI El Reno, to allow him to participate in welding programs, if appropriate.

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

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 UNITED STATES MARSHAL

DEFENDANT: EDWARD RAY CROSBY
CASE NUMBER: 3:16-CR-00405-M (01)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **THREE (3) YEARS. This term consists of 3 years on each of counts 1 and 2, with said terms to run concurrently, for a Total Aggregate Term of 3 years.**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall 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 determined by the court.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: EDWARD RAY CROSBY
CASE NUMBER: 3:16-CR-00405-M (01)

STANDARD CONDITIONS OF SUPERVISION

1. the defendant shall not leave the judicial district without the permission of the court or probation officer;
2. the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. 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 probation officer;
10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. 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; and
13. 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.

DEFENDANT: EDWARD RAY CROSBY
CASE NUMBER: 3:16-CR-00405-M (01)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in a program (inpatient and/or outpatient) approved by the U.S. Probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall abstain from the use of alcohol and/or all other intoxicants at any time. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$10 per month.

DEFENDANT: EDWARD RAY CROSBY
 CASE NUMBER: 3:16-CR-00405-M (01)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$200.00	\$0.00	\$0.00

- ☐ The determination of restitution is deferred until An Amended Judgment in a Criminal Case (AO245C) will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- | | | |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: EDWARD RAY CROSBY
 CASE NUMBER: 3:16-CR-00405-M (01)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☐ Lump sum payments of \$ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$200.00 for Counts 1 and 2 which shall be paid immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several
 See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- ☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
The defendant shall forfeit to the government the following property: a Smith and Wesson, Model 19-4, .357-caliber handgun, bearing Serial No. 79978; a Sig Sauer, Model P320, 9-millimeter handgun, bearing Serial No. 58A018344; a Taurus, Model 921, .44-caliber handgun, bearing Serial No. PE402697; and all ammunition recovered with the firearms.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.