

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DANIEL DE LEON,

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. 18-11100
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 13, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DANIEL DE LEON,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CR-125-1

Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:*

Daniel De Leon appeals the revocation of his supervised release from his conviction for possession with intent to distribute over 500 grams of cocaine. The revocation was based on De Leon's plea of true to allegations that he failed seven drug tests in two months and possessed marijuana. De Leon contends that the district court erred by treating revocation as mandatory despite the command in 18 U.S.C. § 3583(d) to consider alternatives to revocation in cases

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 18-11100

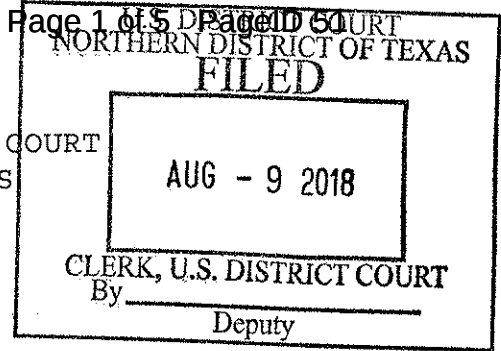
where a supervised release violation involves failing a drug test. Because De Leon did not raise this issue in the district court, he concedes that our review is for plain error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009); *United States v. Williams*, 847 F.3d 251, 254 (5th Cir. 2017).

Pursuant to § 3583(g), revocation of supervised release is mandatory if, inter alia, the defendant possesses a controlled substance or tests positive for drug use more than three times in one year. § 3583(g)(1), (4). However, § 3583(d) provides that a district court shall consider whether appropriate substance abuse treatment programs warrant an exception from the rule of mandatory revocation under § 3583(g) for a defendant who fails a drug test. § 3583(d); *see also* U.S.S.G. § 7B1.4, p.s., comment. (n.6).

De Leon's supervised release was revoked based not only on his failed drug tests but also on his admission that he used and possessed marijuana. We have recently held that when a defendant's violative conduct "include[s] more than failing a drug test," it is "unclear whether [the defendant] qualifies for the treatment exception under our existing case law." *United States v. Brooker*, 858 F.3d 983, 986 (5th Cir.), *cert. denied*, 138 S. Ct. 346 (2017). De Leon presents no binding precedent stating otherwise and concedes that he cannot show clear or obvious error to establish entitlement to relief on plain error review. *See Puckett*, 556 U.S. at 135; *Williams*, 847 F.3d at 254.

Accordingly, the judgment of the district court is AFFIRMED. The Government's motions for summary affirmance and, alternatively, for an extension of time to file an appellate brief are DENIED.

APPENDIX B



IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	NO. 4:18-CR-125-A
	§	
DANIEL DE LEON	§	

JUDGMENT OF REVOCATION AND SENTENCE

Came on to be heard, as contemplated by Fed. R. Crim. P. 32.1, the motion of United States of America to revoke the term of supervised release imposed on defendant, DANIEL DE LEON. After having considered the grounds of the government's motion, defendant's admissions, and statements of defendant, family members, and his counsel, the court has determined that the term of supervised release imposed on defendant should be revoked and that defendant should be sentenced to a term of imprisonment of 9 months and to serve a 51-month term of supervised release upon discharge from prison.

The court finds and concludes that:

(a) Defendant was given, in a timely manner, written notice of his alleged violations of the term of supervised release upon which the motion to revoke is based;

(b) The motion to revoke the term of supervised release was served on defendant in a timely manner prior to the hearing;

(c) There was a disclosure to defendant, and his attorney, of the evidence against defendant; and

(d) The hearing was held within a reasonable time.

Other findings and conclusions of the court were stated by the court into the record at the hearing. The court adopts all such findings and conclusions as part of this judgment.

In reaching the conclusions and making the determinations and rulings announced at the hearing, and as stated in this judgment, the court considered all relevant factors set forth in 18 U.S.C. § 3553(a) that are proper for consideration in a revocation context.

The court ORDERS, ADJUDGES, and DECREES that the term of supervised release, as provided by the judgment in a criminal case imposed September 24, 2014, and signed November 11, 2014, by the Honorable Andrew S. Hanen in Case Number 1:14CR00222-001, in the United States District Court for the Southern District of Texas, be, and is hereby, revoked; and

The court further ORDERS, ADJUDGES, and DECREES that defendant, DANIEL DE LEON, be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 9 months, to be followed by a term of supervised release of 51 months.

The court further ORDERS, ADJUDGES, and DECREES that, while on supervised release, defendant shall comply with the following Standard and Special Conditions of Supervision:

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not possess a firearm, ammunition, destructive device, or other dangerous weapon.
3. The defendant shall not commit another federal, state, or local crime.
4. The defendant shall not possess illegal controlled substances.
5. The defendant shall provide to the U.S. Probation Officer any requested financial information.
6. The defendant shall not leave the judicial district in which he is being supervised without the permission of the court or the U.S. Probation Officer.
7. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.
8. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
9. The defendant shall support his or her dependents and meet other family responsibilities.
10. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.

11. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
12. The defendant shall refrain from excessive use of alcohol and shall 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.
13. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
14. 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 U.S. Probation Officer.
15. 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 by the U.S. Probation Officer.
16. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
17. 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.
18. 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.

Special Conditions of Supervision

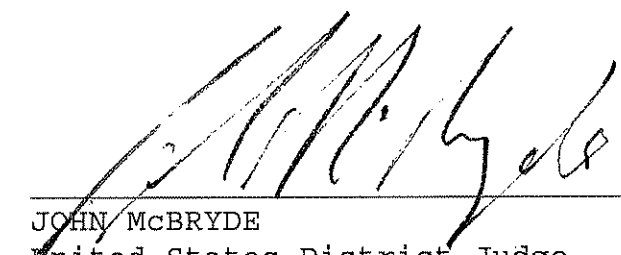
1. The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the probation officer.
2. The defendant shall participate in a program of testing and treatment for drug abuse under the guidance and direction of the U.S. Probation Office until such time as the defendant is released from the program by the probation officer.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by Title 18 United States Code section 3583(f).

The defendant is ordered into the custody of the United States Marshal.

The date of imposition of the sentence provided by this judgment is August 9, 2018.

SIGNED August 9, 2018.



JOHN MCBRYDE
United States District Judge

Personal information about the defendant is set forth on the attachment to this Judgment of Revocation and Sentence.