

No. __-_____

IN THE SUPREME COURT OF THE UNITED STATES

GLENN RAY SMITH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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Northern District of Texas

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APPENDIX A

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

No. 18-11247
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 7, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

GLENN RAY SMITH,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:11-CR-196-11

Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:*

After the district court revoked a term of supervised release that was imposed in 2012, the court sentenced Glenn Ray Smith to prison and an additional term of supervised release. Smith challenges a condition of supervised release that requires him to “permit a probation officer to visit him . . . at any time at home or elsewhere and shall permit confiscation of any

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

contraband observed in plain view.” He asserts that this visitation condition is unreasonable and unconstitutionally overbroad.

The Government moves for summary affirmance on the ground that our recent decision in *United States v. Cabello*, 916 F.3d 543, 544 (5th Cir. 2019), forecloses Smith’s challenge to the visitation condition. The Government certifies that Smith does not oppose summary affirmance, though he wishes to preserve the issue for possible further review.

In *Cabello*, which was decided while this appeal was pending, this court found no plain error in the imposition of the visitation condition. *Cabello*, 916 F.3d at 544. As Smith concedes, review in this case is also for plain error because he did not object to the condition. *See United States v. Jones*, 484 F.3d 783, 792 (5th Cir. 2007). *Cabello* is directly on point and dictates that the judgment against Smith be affirmed.

Accordingly, the Government’s motion for summary affirmance is GRANTED, and the judgment is AFFIRMED. The Government’s alternative motion for an extension of time for briefing is DENIED AS MOOT.

APPENDIX B

United States District CourtNorthern District of Texas
Fort Worth DivisionU.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

MAY 31 2012

CLERK, U.S. DISTRICT COURT

By _____
Deputy

UNITED STATES OF AMERICA §

v. §

Case Number: 4:11-CR-196-A(11)

GLENN RAY SMITH §

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney J. Stevenson Weimer. The defendant, GLENN RAY SMITH, was represented by Gary D. Smart.

The defendant pleaded guilty on January 19, 2012 to count 4 of the indictment filed on December 14, 2011. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Date Offense Concluded</u> | <u>Count Number</u> |
|----------------------------|--|-----------------------------------|-------------------------|
| 18 U.S.C. §§ 513(a) & 2 | FORGED AND COUNTERFEIT SECURITY OF A PRIVATE ENTITY AND AIDING AND ABETTING | November 17, 2010 | 4 |

As pronounced and imposed on May 31, 2012, the defendant is sentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 54 months.

The court recommends to the Bureau of Prisons that defendant be allowed to participate in the Institution Residential Drug Abuse Treatment Program. The Bureau of Prisons to notify the court if the defendant cannot participate in the Institution Residential Drug Abuse Treatment Program, and is to give the court an explanation of why he cannot participate.

SUPERVISED RELEASE

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years and that while on supervised release, the defendant shall comply with the following conditions:

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not possess illegal controlled substances.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. The defendant shall refrain from incurring new credit charges or opening additional lines of credit without approval of the probation officer unless the probation officer makes a determination that the defendant has fully satisfied the restitution obligation.
5. The defendant shall provide to the probation officer complete access to all business and personal financial information.
6. The defendant shall not transfer, sell, give away, or otherwise convey any asset with a value of \$500 or more without the approval of the probation officer.
7. If, upon commencement of the term of supervised release, any part of the \$1,723.65 restitution ordered by this judgment remains unpaid, the defendant shall make payments on such unpaid amount at the rate of at least \$100 per month, the first such payment to be made no later than 60 days after the defendant's release from confinement and another payment to be made on the same day of each month thereafter until the restitution amount is paid in full. Any unpaid balance of the restitution ordered by this judgment shall be paid in full 60 days prior to the termination of the term of supervised release.
8. The defendant shall not be employed in any fiduciary capacity or any position allowing access to credit or personal financial information of others, unless the defendant's employer is fully aware of the offense of conviction and with the approval of the probation officer.
9. The defendant shall 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.
10. The defendant shall participate in a program (inpatient and/or outpatient) approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance abuse, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment and contributing to the costs of services rendered at the rate of at least \$50 per month.

11. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

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, destructive device, or other dangerous weapon.
3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district without the permission of the Court or U.S. Probation Officer.
5. 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.
6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support his or her dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. 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.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. 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.
13. 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.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.

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15. 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.

16. 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.

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 18 U.S.C. § 3583(f).

FINE

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

RESTITUTION

The court further ORDERS defendant shall make full restitution, in the amount of \$1,723.65. Restitution is payable immediately, but non-payment will not be a violation of defendant's conditions of supervised release so long as defendant pays as provided in defendant's conditions of supervised release. All restitution payments shall be made by defendant to the Clerk of the U.S. District Court, 501 West 10th Street, Room 310, Fort Worth, Texas 76102, for disbursement to the victim whose name and loss for which restitution is to be made is listed below:

Frost National Bank
777 Main Street, Suite 500
Fort Worth, Texas 76102
Attn: Jami Rasco
RE: 4:11-CR-196-A(11)/Moore, et al

Defendant shall receive credit on his restitution obligation for recovery from other persons if the recovery represents part of the same loss that gave rise to defendant's restitution obligation.

STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 31 day of May, 2012.


JOHN McBRYDE
UNITED STATES DISTRICT JUDGE

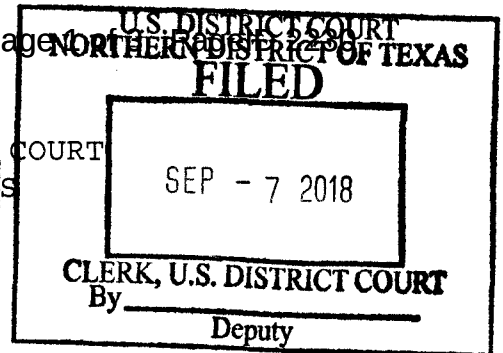
I have executed the imprisonment part of this Judgment as follows:

Defendant delivered on _____, 2012 to _____ at
_____, with a certified copy of this Judgment.

Randy Ely
United States Marshal for the
Northern District of Texas

By _____
Deputy United States Marshal

APPENDIX C



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

UNITED STATES OF AMERICA §
 §
VS. § NO. 4:11-CR-196-A
 §
GLENN RAY SMITH §

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, GLENN RAY SMITH. After having considered the grounds of the government's motion, defendant's admissions, statements on behalf of defendant, and argument of 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 24 months and to serve a 12-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 December 17, 2010, and signed December 20, 2010, (the "underlying judgment") be, and is hereby, revoked; and

The court further ORDERS, ADJUDGES, and DECREES that defendant, GLENN RAY SMITH, be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 24 months, to be followed by a term of supervised release of 12 months.

The court further ORDERS, ADJUDGES, and DECREES that, while on supervised release, defendant shall comply with the same conditions as set forth in the underlying judgment, except that

standard condition of supervision number 4 is amended to read as follows:

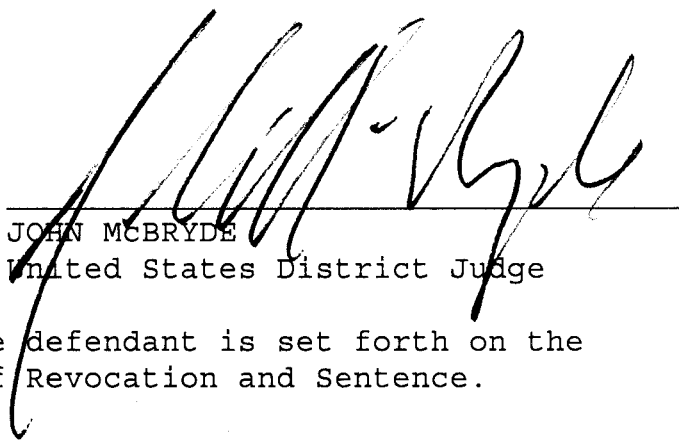
The defendant shall not leave the judicial district in which he is being supervised without permission of the U.S. Probation Officer.

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 remanded to the custody of the United States Marshal.

The date of imposition of the sentence provided by this judgment is September 7, 2018.

SIGNED September 7, 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.