

Appendix A

United States v. Torres

United States Court of Appeals for the Fifth Circuit

September 6, 2019, Filed

No. 18-11244 Summary Calendar

Reporter

776 Fed. Appx. 855 *; 2019 U.S. App. LEXIS 27124 **; 2019 WL 4253869

UNITED STATES OF AMERICA, Plaintiff—Appellee, v.
APRIL TORRES, Defendant—Appellant.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.*

Prior History: [\[**1\]](#) Appeal from the United States District Court for the Northern District of Texas. USDC No. 4:12-CR-244-1.

Counsel: For United States of America, Plaintiff - Appellee: Leigha Amy Simonton, Assistant U.S. Attorney, U.S. Attorney's Office, Dallas, TX; Michael Levi Thomas, Assistant U.S. Attorney, U.S. Attorney's Office, Fort Worth, TX.

For April Torres, Defendant - Appellant: Brandon Elliott Beck, Federal Public Defender's Office, Lubbock, TX.

Judges: Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

Opinion

[\[*855\]](#) PER CURIAM:^{*}

April Torres pleaded guilty to conspiracy to possess with intent to distribute marijuana and was sentenced to 151 months of imprisonment followed by five years of supervised release. The district court revoked Torres's supervised release and sentenced her to 30 months of imprisonment, which was above the policy statement range of 6 to 12 months. Torres filed a timely notice of appeal.

Torres argues that her 30-month revocation sentence is substantively unreasonable because the district court failed to fully consider her history and characteristics and

overemphasized the need for deterrence when balancing the sentencing factors. This court considers the substantive reasonableness of a revocation sentence [\[**2\]](#) under an abuse-of-discretion standard, "examining the totality of the circumstances." [United States v. Warren, 720 F.3d 321, 332 \(5th Cir. 2013\)](#).

The record reflects that the district court considered the policy statement range from Chapter 7 of the Sentencing Guidelines and ultimately determined that a 30-month sentence was necessary to protect the public and to deter further criminal activity—factors that were appropriate for the district court to consider in imposing the revocation sentence. [18 U.S.C. § 3583\(e\)](#) (identifying [18 U.S.C. § 3553\(a\)](#) factors to be considered). This court must give due deference to the district court's decision and thus declines to reweigh the factors. [Gall v. United States, 552 U.S. 38, 51, 128 S. Ct. 586, 169 L. Ed. 2d 445 \(2007\)](#).

Though the district court simply noted that Torres had "twice had her terms of supervised release revoked for committing additional crimes" and stated that "nothing short of incarceration deters . . . Torres from committing additional crimes," the court was aware of Torres's full history and characteristics. At the revocation hearing, the court heard from Torres and her attorney about her current employment, living situation, and financial and family obligations. Moreover, the same district judge who presided over the instant revocation also presided over Torres's two prior supervised release revocations. [\[**3\]](#)

[\[*856\]](#) Finally, Torres's 30-month revocation sentence is below the statutory maximum term of imprisonment of five years. *See 18 U.S.C. § 3559(a)(1); 18 U.S.C. § 3583(e)(3); 21 U.S.C. § 841(a)(1), (b)(1)(A)*. This court has routinely upheld revocation sentences exceeding the policy statement range, but not the statutory maximum, against challenges that the sentences were substantively unreasonable. [Warren, 720 F.3d at 332](#). Under the totality of the circumstances, the district court did not abuse its discretion in imposing Torres's revocation sentence. *See id.*

The judgment of the district court is AFFIRMED.

^{*} 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*.

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Appendix B

United States District Court

Northern District of Texas
Fort Worth Division

UNITED STATES OF AMERICA

v.

APRIL TORRES

JUDGMENT IN A CRIMINAL CASE for revocation of supervised release

Case number: 4:12-CR-244-Y (1)

Shawn Smith, assistant U.S. attorney

William Hermesmeyer, attorney for the defendant

On September 6, 2018, a hearing was held, at which time the Court determined that the defendant, April Torres, had violated her 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. 9 & mandatory condition no. 1	By associating with any persons engaged in criminal activity and by committing another federal, state, or local crime	December 2017

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 September 6, 2018.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed September 7, 2018.

IMPRISONMENT

The defendant, April Torres, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 30 months, pursuant to USSG § 7B1.4(a), p.s., to run consecutively to any other sentence that may be imposed by any federal, state, or local court. No term of supervised release shall follow the defendant's release from custody.

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

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