

APPENDIX A

United States v. Anderson

United States Court of Appeals for the Fifth Circuit

February 24, 2020, Filed

No. 19-10180 Summary Calendar

Reporter

795 Fed. Appx. 267 *; 2020 U.S. App. LEXIS 5633 **; 2020 WL 896679

Judges.

UNITED STATES OF AMERICA, Plaintiff-Appellee v.
BRENT ANDERSON, Defendant-Appellant

Opinion

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE* RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.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. 4:18-CR-247-1.

United States v. Anderson, 2018 U.S. Dist. LEXIS 180110 (N.D. Tex., Oct. 3, 2018)

Disposition: AFFIRMED.

Counsel: For UNITED STATES OF AMERICA, Plaintiff-Appellee: Leigha Amy Simonton, Assistant U.S. Attorney, U.S. Attorney's Office, Northern District of Texas, Dallas, TX.

For BRENT ANDERSON, Defendant - Appellant: Brandon Elliott Beck, Federal Public Defender's Office, Northern District of Texas, Lubbock, TX; Taylor Wills Edwards Brown, Federal Public Defender's Office, Northern District of Texas, Fort Worth, TX.

Judges: Before SMITH, DENNIS, and DUNCAN, Circuit

[\[*267\]](#) PER CURIAM:*

Brent Anderson appeals the sentence imposed following his guilty plea conviction for being a felon in possession of a firearm in violation of [18 U.S.C. §§ 922\(g\)\(1\)](#) and [924\(a\)\(2\)](#). He argues that the district court plainly erred in applying a [U.S.S.G. § 3C1.2](#) enhancement for reckless endangerment during his flight from law enforcement after applying a [U.S.S.G. § 2K2.1](#) enhancement for possessing a firearm in connection with another felony offense, namely, the state felony offense of evading arrest with a vehicle. To apply both enhancements, Anderson argues, constituted impermissible double counting pursuant to application note one to [§ 3C1.2](#). Anderson alternatively argues that the district [\[**2\]](#) court plainly erred in applying the [§ 2K2.1](#) enhancement because he did not possess the firearm "in connection with" his vehicular flight from law enforcement.

Because Anderson did not object to the enhancements before the district court, our review is for plain error. *See Puckett v. United States, 556 U.S. 129, 135, 129 S. Ct. 1423, 173 L. Ed. 2d 266 (2009)*. To show plain error, Anderson has to show that an error occurred, that the error was clear or obvious, and that the error affected his substantial rights. *See id.* If he makes such a showing, this court has the discretion to [\[*268\]](#) correct the error but only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *See id.*

With regard to the [§ 2K2.1\(b\)\(6\)\(B\)](#) enhancement, Anderson correctly concedes that the issue whether he possessed the firearm "in connection with" his evading arrest offense is a

* 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*.

question of fact that was capable of resolution by the district court and thus cannot constitute plain error. *See United States v. Coleman*, 609 F.3d 699, 708 (5th Cir. 2010); *United States v. Lopez*, 923 F.2d 47, 50 (5th Cir. 1991). Moreover, on this record, we conclude that Anderson has failed to show that the district court plainly erred in applying both enhancements in calculating his sentence. *See Puckett*, 556 U.S. at 135; *United States v. Gillyard*, 261 F.3d 506, 511-12 (5th Cir. 2001). Notably, even if we were to conclude that Anderson had shown error here, we could not, given this circuit's range of authority [**3] in cases addressing double counting guidelines issues, say that the error was clear or obvious. *See United States v. Anthony*, 755 F. App'x 364, 367 (5th Cir. 2018), cert. denied, 139 S. Ct. 1576, 203 L. Ed. 2d 735 (2019); *United States v. Bocanegra-Rodriguez*, 336 F. App'x 430, 430-31 (5th Cir. 2009); *Gillyard*, 261 F.3d at 511-12; *United States v. Cabral-Castillo*, 35 F.3d 182, 188-89 & n.8 (5th Cir. 1994). In light of this conclusion, we do not reach prongs three and four of the plain error analysis. *See Puckett*, 556 U.S. at 135.

AFFIRMED.

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APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

BRENT ANDERSON

Case Number: 4:18-CR-00247-Y(1)

Megan J. Fahey, assistant U.S. attorney

Taylor W. E. Brown, attorney for the defendant

On October 3, 2018, the defendant, Brent Anderson, entered a plea of guilty to count one of the one-count information. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE CONCLUDED</u>	<u>COUNT</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	Felon in Unlawful Firearm Possession	June 4, 2018	1

The defendant is sentenced as provided in pages two through three of this judgment. The sentence is imposed under Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission under Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 for count one of the one-count information.

The defendant shall notify the United States attorney for this district within thirty 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 January 31, 2019.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed February 5, 2019.

Judgment in a Criminal Case

Defendant: Brent Anderson

Case Number: 4:18-CR-00247-Y(1)

Judgment -- Page 2 of 3

IMPRISONMENT

The defendant, Brent Anderson, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 74 months on count one of the one-count information. This sentence shall run concurrently with any future sentence imposed in Case No. 1547753D in Criminal District Court No. 3, Tarrant County, Texas, but consecutively to any future sentence imposed in Case Nos. 1555191 and 1555192 in Criminal Court No. 7, Tarrant County, Texas.

The Court recommends that the defendant be incarcerated at FMC-- Fort Worth, Texas, if possible.

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 3 years on count one of the one-count information.

While on supervised release, the defendant shall comply with the standard conditions recommended by the United States Sentencing Commission and shall comply with the following additional conditions:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer in a manner and frequency directed by the Court or probation officer;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and 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;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) 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) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the probation officer, as authorized by the Justice for All Act of 2004;

report in person to the U.S. Probation Office in the district to which the defendant is released within 72 hours of release from the custody of the Federal Bureau of Prisons;

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 directed by the probation officer;

participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month; and,

participate in a domestic violence treatment program (i.e. batterer's intervention program and anger management program) as directed by the probation officer until successfully discharged. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$25 per month.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

FORFEITURE

Pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), it is hereby ordered that defendant's interest in the following property is condemned and forfeited to the United States: a Masterpiece Arms, 9-millimeter pistol, Serial No. F19646, including any ammunition, magazines, and/or accessories recovered with the firearm.

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