

APPENDIX A

United States v. Bates

United States Court of Appeals for the Fifth Circuit

March 18, 2020, Filed

No. 19-10813 Summary Calendar

Reporter

797 Fed. Appx. 888 *; 2020 U.S. App. LEXIS 8702 **

UNITED STATES OF AMERICA, Plaintiff-Appellee v.
TRESHUN DEVONTE BATES, 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Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.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. 5:19-CR-24-1.

United States v. Bates, 2019 U.S. Dist. LEXIS 57374 (N.D. Tex., Apr. 3, 2019)

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

For Treshun Devonte Bates, Defendant - Appellant: Brandon Elliott Beck, Federal Public Defender's Office, Lubbock, TX.

Judges: Before KING, GRAVES, and WILLETT, Circuit Judges.

Opinion

PER CURIAM:^{*}

[*888] Treshun Devonte Bates appeals his 71-month, within-guidelines sentence for being a convicted felon in possession of a firearm. Bates contends that the district court's application of the enhanced base offense level under U.S.S.G. § 2K2.1(a)(4)(A) was erroneous because his Texas conviction for assault of a public servant does not qualify as a crime of violence, given that the statute of conviction criminalizes reckless conduct and therefore lacks force as an element. The Government moves for summary affirmance, arguing that Bates's argument is foreclosed by *United States v. Rocha Flores*, 921 F.3d 1133 (5th Cir. 2019).

Bates correctly concedes that his argument is foreclosed, and he raises it only to preserve the issue for future review. See *Rocha Flores*, 921 F.3d at 1133; see also *United States v. Reyes-Contreras*, 910 F.3d 169, 183 (5th Cir. 2018) (en banc) (considering former U.S.S.G. § 2L1.2(b)(1)(A)(ii) and recognizing that the use-of-force requirement may include knowing or reckless [**2] conduct); *United States v. Moore*, 635 F.3d 774, 776 (5th Cir. 2011) (interpreting guidelines provisions and statutes with similar language interchangeably). The Government is "clearly right as a matter of law" such that "there can be no substantial question as to the outcome of the case." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, the Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED. The Government's alternative [*889] motion for an extension of time to file a brief is DENIED.

End of Document

^{*} 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*.

APPENDIX B

United States District Court

Northern District of Texas

Lubbock Division

UNITED STATES OF AMERICA

v.

TRESHUN DEVONTE BATES
Defendant.

Case Number: 5:19-CR-00024-C(01)
USM No. 58446-177

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, TRESHUN DEVONTE BATES, was represented by David E. Sloan.

The defendant pleaded guilty to count 1 of the indictment filed February 13, 2019. Accordingly, the court has adjudicated that the defendant is guilty of the following offenses:

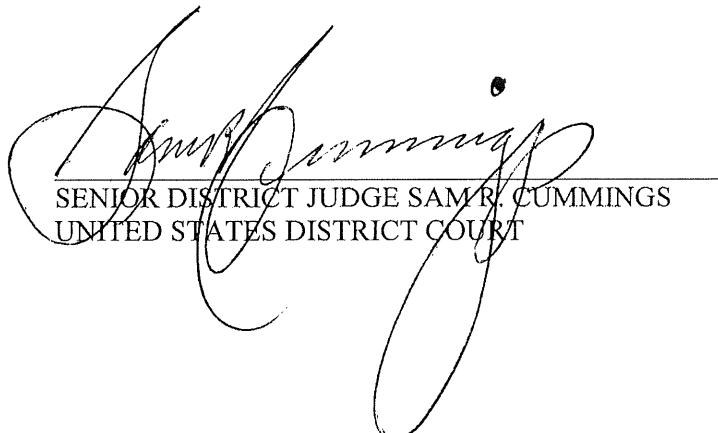
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	Convicted Felon In Possession Of A Firearm	08/30/2018	1

As pronounced on July 12, 2019, the defendant is sentenced as provided in pages 1 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$100.00, for count 1 of the indictment, which shall be due immediately. Said special assessment shall be made to the Clerk, U.S. District Court.

It is further 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 change in the defendant's economic circumstances.

Signed this the 12th day of July, 2019.



SENIOR DISTRICT JUDGE SAM R. CUMMINGS
UNITED STATES DISTRICT COURT

DEFENDANT: TRESHUN DEVONTE BATES
CASE NUMBER: 5:19-CR-00024-C(01)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 71 months as to count 1 to run consecutive to any sentence imposed in Case No. 2018-494,558 pending in County Court at Law No. 2, Lubbock County, Texas.

The defendant shall remain in the custody of the U.S. Marshal Service.

The Court recommends incarceration at FCI Big Spring, Texas.

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: TRESHUN DEVONTE BATES
 CASE NUMBER: 5:19-CR-00024-C(01)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a 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 illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

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 directed by the probation officer.

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.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- The defendant shall cooperate in the collection of DNA as directed by the probation officer.
- The defendant shall 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 he or she resides, works, is a student, or was convicted of a qualifying offense.
- The defendant shall participate in an approved program for domestic violence.
- The defendant must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Fine and Restitution sheet of the judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

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 by 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.
- 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: TRESHUN DEVONTE BATES
CASE NUMBER: 5:19-CR-00024-C(01)

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall abstain from the use of alcohol and all other intoxicants during the term of supervision.
2. 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 contribute to the costs of services rendered (copayment) at a rate of at least \$20.00 per month.