

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIE HUGH WASHINGTON,

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**

United States Court of Appeals
Fifth Circuit

FILED

April 17, 2020

Lyle W. Cayce
Clerk

No. 19-10728
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

WILLIE HUGH WASHINGTON,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:13-CR-106-1

Before CLEMENT, ELROD, and OLDHAM, Circuit Judges.

PER CURIAM:*

Willie Hugh Washington appeals from the third revocation of his term of supervised release for his original conviction of conspiracy to possess with intent to distribute at least five grams of methamphetamine. For the third revocation, the district court sentenced Washington to three years of imprisonment and ten years of supervised release.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Washington argues that his sentence was procedurally unreasonable because the district court treated the revocation as mandatory and failed to consider drug treatment as an alternative, as required under 18 U.S.C. § 3583(d). Additionally, he contends that the district court failed to consider his argument that his relapses into drug use were triggered by trauma. Washington did not preserve these issues for appellate review. *See United States v. Mondragon-Santiago*, 564 F.3d 357, 361 (5th Cir. 2009).

The record indicates that the district court implicitly considered these concerns. Moreover, the district court provided a sufficient explanation for his above-guidelines sentence. *See Rita v. United States*, 551 U.S. 338, 356-58 (2007); *United States v. Fraga*, 704 F.3d 432, 439 (5th Cir. 2013). Accordingly, Washington has not demonstrated that the district court committed plain error by imposing a procedurally unreasonable sentence. *See Mondragon-Santiago*, 564 F.3d at 361.

In light of the Supreme Court's decision in *United States v. Haymond*, 139 S. Ct. 2369 (2019), Washington also argues that his sentence is procedurally unreasonable because the mandatory revocation and sentence of imprisonment required under § 3583(g) were unconstitutional. However, because Washington raised this issue for the first time in his reply brief and because it did not derive from any new arguments raised by the Government on appeal, we will not consider this issue. *See United States v. Rodriguez*, 602 F.3d 346, 360 (5th Cir. 2010).

In addition, Washington argues that his above-guidelines sentence was substantively unreasonable because his sentence of imprisonment was more than three times the upper end of the advisory guidelines range, because the district court failed to consider drug treatment as an alternative, because the total of his current and prior revocation sentences exceeds his original 60-

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month sentence, and because his prior revocation sentences of imprisonment and supervised release were unsuccessful. However, he has not shown that the district court did not account for a sentencing factor that should have received significant weight, gave significant weight to an irrelevant or improper factor, or made a clear error in judgment when balancing the sentencing factors. *See United States v. Warren*, 720 F.3d 321, 332 (5th Cir. 2013). Thus, he has not demonstrated that the district court imposed a sentence that was substantively unreasonable, plainly or otherwise. *See United States v. Miller*, 634 F.3d 841, 843 (5th Cir. 2011); *United States v. Rodriguez*, 523 F.3d 519, 525 (5th Cir. 2008).

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case Number W-09-CR-111(05)
USM Number 29844-280

WILLIE HUGH WASHINGTON
(TRUE NAME: WILLIE HUGH WASHINGTON, JR.),

Defendant.

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

The defendant, WILLIE HUGH WASHINGTON, JR., was represented by William W. Torrey.

On motion of the United States, the Court has dismissed Counts 1, 2 and 2S.

The defendant pled guilty to Count 1S of the Superseding Indictment on August 20, 2009. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 USC 846 {21 USC 841(a)(1) & (b)(1)(B)(viii)}	Conspiracy to Possess with Intent to Distribute at Least 5 Grams of Methamphetamine, a Schedule II Controlled Substance	06/18/09	1S

As pronounced on October 14, 2009, the defendant is sentenced as provided in Pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further ordered that the defendant shall 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 shall notify the Court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this the 20th day of October, 2009.


WALTER S. SMITH JR.
CHIEF UNITED STATES DISTRICT JUDGE

Judgment--Page 2

Defendant: WILLIE HUGH WASHINGTON, JR.
Case Number: W-09-CR-111(05)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of SIXTY (60) MONTHS.

The Court makes the following recommendations to the Bureau of Prisons: That the defendant be incarcerated in a facility in the Fort Worth/Dallas, Texas, area or in the Central Texas area.

If the Bureau of Prisons does not comply with this recommendation, it shall promptly notify the Court in writing of its reasons therefor.

The defendant shall remain in custody pending service of sentence.

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

Defendant: WILLIE HUGH WASHINGTON, JR.
Case Number: W-09-CR-111(05)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of THREE (3) YEARS.

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court as set forth on Pages 4 and 5 of this judgment.

Defendant: WILLIE HUGH WASHINGTON, JR.

Case Number: W-09-CR-111(05)

CONDITIONS OF SUPERVISION

Mandatory Conditions:

- 1) The defendant shall not commit another federal, state, or local crime.
- 2) 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.
- 3) In supervised release cases only, the defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from custody of the Bureau of Prisons.
- 4) If convicted of a felony, the defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- 5) The defendant shall cooperate in the collection of DNA as directed by the probation officer if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 1413a).
- 6) If convicted of a sexual offense as described in 18 U.S.C. § 4042(c)(4), the defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer.
- 7) If convicted of a domestic violence crime as defined in 18 U.S. C. § 3561(b), the defendant shall participate in an approved program for domestic violence.
- 8) If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.

Standard Conditions:

- 1) The defendant shall not leave the judicial district without permission of the court or probation officer.
- 2) The defendant shall report to the Probation Officer and shall submit a truthful and complete written report within the first five days of each month.
- 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 substance, 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 of 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 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: WILLIE HUGH WASHINGTON, JR.

Case Number: W-09-CR-111(05)

- 14) If convicted of a sexual offense as described in 18 U.S.C. § 4042(c)(4), or has a prior conviction of a State or local offense that would have been an offense as described in 18 U.S.C. § 4042 (c)(4) if a circumstance giving rise to Federal jurisdiction had existed, the defendant shall participate in a sex offender treatment program approved by the probation officer. The defendant shall abide by all program rules, requirements and conditions of the sex offender treatment program, including submission to polygraph testing, to determine if the defendant is in compliance with the conditions of release. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based on the defendant's ability to pay.
- 15) The defendant shall submit to an evaluation for substance abuse or dependency treatment as directed by the probation officer, and if deemed necessary by the probation officer, the defendant shall participate in a program approved by the probation officer for treatment of narcotic addiction or drug or alcohol dependency which may include testing and examination to determine if the defendant has reverted to the use of drugs or alcohol. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based upon the defendant's ability to pay.
- 16) The defendant shall submit to an evaluation for mental health counseling as directed by the probation officer, and if deemed necessary by the probation officer, the defendant shall participate in a mental health program approved by the probation officer. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based upon the defendant's ability to pay.
- 17) If the defendant is excluded, deported, or removed upon release from imprisonment, the term of supervised release shall be a non-reporting term of supervised release. The defendant shall not illegally re-enter the United States. If the defendant lawfully re-enters the United States during the term of supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.
- 18) If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.
- 19) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.
- 20) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the payment schedule.

The Court further adopts such of the following special conditions applied to the supervised person by the judge at the time of sentencing:

- 1) **COMMUNITY CONFINEMENT:** The defendant shall reside in a Community Corrections Center for a period of _____ months to commence on _____. Further, once employed, the defendant shall pay 25% of his/her weekly gross income for his/her subsistence as long as that amount does not exceed the daily contract rate.
- 2) **HOME DETENTION:** The defendant shall participate in the Home Confinement Program for a period of _____ days/months. During this time the defendant shall remain at his/her place of residence except for employment and other activities approved in advance by the probation officer. The defendant shall maintain a telephone at his/her place of residence without "call forwarding," a "modem," "caller ID," "call waiting," or portable cordless telephones for the above period. At the direction of the probation officer, the defendant shall wear an electronic monitoring device and follow electronic monitoring procedures specified by the probation officer. The court further orders that the defendant shall pay for the costs of Home Confinement, as directed by the probation officer.
- 3) **COMMUNITY SERVICE:** The defendant shall perform _____ hours of community service work without pay, at a location approved by the probation officer, at a minimum rate of four hours per week, to be completed during the first _____ months of supervision.

Defendant: WILLIE HUGH WASHINGTON, JR.
Case Number: W-09-CR-111(05)

CRIMINAL MONETARY PENALTIES/ SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 800 Franklin Avenue, Room 380, Waco, Texas 76701.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTAL: \$100.00	\$1,000.00	\$0

Special Assessment

It is ordered that the defendant shall pay to the United States a special assessment of \$100.00. Payment of this sum shall begin immediately.

Fine

The defendant shall pay a fine of \$1,000.00. Payment of this sum shall begin immediately. The Court determines that the defendant does not have the ability to pay interest and therefore waives the interest requirement pursuant to 18 U.S.C. § 3612(f)(3). The fine is below guideline range because of the defendant's inability to pay a fine within the guideline range.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

APPENDIX C

JUN 13 2019

CLERK, U.S. DISTRICT COURT
By _____ Deputy

UNITED STATES OF AMERICA

§

VS.

§

NO. 4:13-CR-106-A

WILLIE HUGH WASHINGTON

§

§

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, WILLIE HUGH WASHINGTON. After having considered the grounds of the government's motion, defendant's admissions, argument of counsel, and statements of defendant and his character witnesses, 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 3 years and to serve a 10-year 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 of Revocation and Sentence in this case signed and imposed August 18, 2016, be, and is hereby, revoked; and

The court further ORDERS, ADJUDGES, and DECREES that defendant, WILLIE HUGH WASHINGTON, be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 3 years, to be followed by a term of supervised release of 10 years.

The court further ORDERS, ADJUDGES, and DECREES that, while on supervised release, defendant shall comply with the conditions

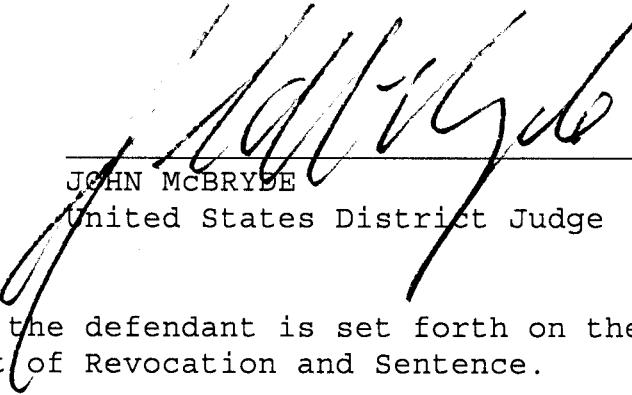
of supervised release set forth in such August 18, 2016 Judgment of Revocation and Sentence.

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 June 13, 2019.

SIGNED June 13, 2019.


JOHN MCBRYDE
United States District Judge

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