

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RACHEL MAE SKIDMORE,
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**

No. 19-11053
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 21, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RACHEL MAE SKIDMORE,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
No. 4:11-CR-60-1

Before DAVIS, SMITH, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Rachel Skidmore appeals the revocation of her supervised release ("SR") and the resulting 24-month imprisonment. Skidmore's SR was revoked per 18 U.S.C. § 3583(g), which requires the mandatory revocation of SR and imposition of imprisonment for defendants found to have committed certain

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

offenses, including possession of a controlled substance.

For the first time on appeal, Skidmore maintains that § 3583(g) is unconstitutional in light of *United States v. Haymond*, 139 S. Ct. 2369 (2019), because it does not require a jury determination of guilt beyond a reasonable doubt. As Skidmore concedes, review of this unpreserved issue is for plain error, which requires her to show, *inter alia*, (1) an error that has not been affirmatively waived and (2) that is clear or obvious. *See Puckett v. United States*, 556 U.S. 129, 135 (2009).

Haymond addressed the constitutionality of § 3583(k), and the plurality opinion, 139 S. Ct. at 2382 n.7, explicitly disclaimed any view on the constitutionality of § 3583(g). In the absence of precedent from the Supreme Court or this court extending *Haymond* to § 3583(g), there is no clear or obvious error. *See Puckett*, 556 U.S. at 135; *United States v. Evans*, 587 F.3d 667, 671 (5th Cir. 2009).

For the first time on appeal, Skidmore contends that the district court plainly erred in failing to consider the advisory policy statement of U.S.S.G. § 7B1.4 before imposing sentence. The record does not support that assertion. The probation officer's petition for offender under supervision set forth § 7B1.4's recommended imprisonment range of 8 to 14 months. At the revocation hearing, the court expressly referenced the petition for offender under supervision filed by the probation officer, supporting the conclusion that the court reviewed the petition and implicitly considered the policy statement and the advisory range discussed therein. Skidmore has not shown any error, much less one that was clear or obvious. *See United States v. Warren*, 720 F.3d 321, 332–33 (5th Cir. 2013).

AFFIRMED.

APPENDIX B

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

SEP 19 2019

CLERK, U.S. DISTRICT COURT

By _____ Deputy _____

UNITED STATES OF AMERICA

§

§

VS.

§

NO. 4:11-CR-060-A(01)

§

RACHEL MAE SKIDMORE

§

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, RACHEL MAE SKIDMORE. After having considered the grounds of the government's motion, defendant's admissions, the evidence, the character witness statement, argument of counsel, and defendant's statement, 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.

The court finds and concludes that:

- (a) Defendant was given, in a timely manner, written notice of her 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 her 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.

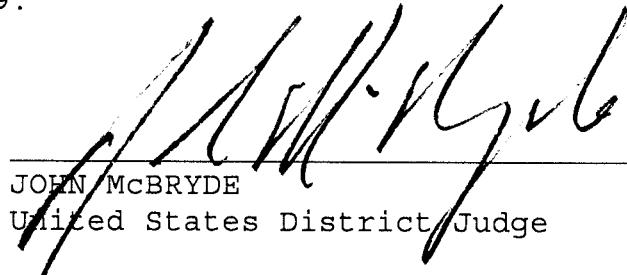
The court ORDERS, ADJUDGES, and DECREES that the term of supervised release, as provided by the judgment of revocation and sentence imposed and signed February 23, 2017 ("the underlying judgment"), be, and is hereby, revoked; and

The court further ORDERS, ADJUDGES, and DECREES that defendant, RACHEL MAE SKIDMORE, be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 24 months.

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 19, 2019.

SIGNED September 19, 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.