

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ALONTE DESHAVION RICHEY,

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. 19-11019
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 10, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ALONTE DESHAVION RICHEY,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-53-1

Before STEWART, HIGGINSON, and COSTA, Circuit Judges.

PER CURIAM:*

Alonte Deshavion Richey appeals the revocation of his supervised release and the 18-month sentences of imprisonment and supervised release imposed upon revocation. Richey's supervised release was revoked pursuant to 18 U.S.C. § 3583(g), which requires the mandatory revocation of supervised release and imposition of a term of imprisonment for defendants found to have committed certain offenses, including possession of a controlled substance.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

No. 19-11019

For the first time on appeal, Richey argues that § 3583(g) is unconstitutional in light of the Supreme Court's decision in *United States v. Haymond*, 139 S. Ct. 2369 (2019), because it does not require a jury determination of guilt beyond a reasonable doubt. As he concedes, review of this unpreserved issue is for plain error, which requires him to show (1) an error that has not been affirmatively waived, (2) that is clear or obvious, and (3) that affected his substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). If he can satisfy those three prongs, this court has the discretion to correct the error if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *See id.*

The Supreme Court's decision in *Haymond* addressed the constitutionality of § 3583(k), and the plurality opinion specifically disclaimed expressing any view of the constitutionality of § 3583(g). *See Haymond*, 139 S. Ct. at 2382 n.7. In the absence of precedent from either the Supreme Court or this court extending *Haymond* to § 3583(g), we conclude that 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). Accordingly, the judgment of the district court is AFFIRMED.

APPENDIX B

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

SEP - 5 2019

CLERK, U.S. DISTRICT COURT
By _____ Deputy

UNITED STATES OF AMERICA

§

§

VS.

§

NO. 4:19-CR-053-A

§

ALONTE DESHAVION RICHEY

§

§

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, **ALONTE DESHAVION RICHEY**. After having considered the grounds of the government's motion, defendant's admissions, statements of and on behalf of defendant, and argument of counsel, 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 18 months and to serve an 18-month 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 in a criminal case imposed February 24, 2017, and signed February 28, 2017, in Case No. 3:16-CR-00179-1-MO in the United States District Court for the District of Oregon, the Honorable Michael W. Mosman presiding (the "underlying judgment") be, and is hereby, revoked; and

The court further ORDERS, ADJUDGES, and DECREES that defendant, **ALONTE DESHAVION RICHEY**, be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 18 months, to be followed by a term of supervised release of 18 months.

The court further ORDERS, ADJUDGES, and DECREES that, while on supervised release, defendant shall comply with the same conditions as set forth in the underlying judgment, except that standard condition of supervision number 3 is amended to read as follows:

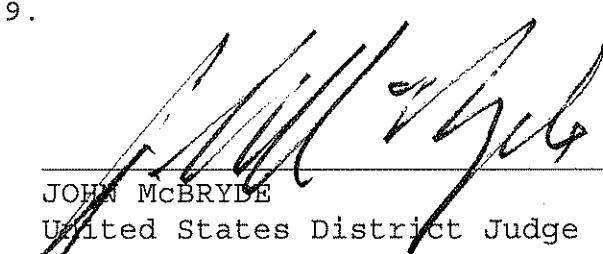
The defendant shall not leave the judicial district in which he is being supervised without permission of the U.S. Probation Officer.

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 September 5, 2019.

SIGNED September 5, 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.