

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

KEVIN MERRITT,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

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Northern District of Texas

APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 12, 2020

Lyle W. Cayce
Clerk

No. 19-10985
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

KEVIN MERRITT,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-88-1

Before JOLLY, JONES, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Contending that the district court considered unreliable evidence in selecting his punishment, Kevin Merritt appeals the 235-month prison term and three-year supervised release term imposed on his guilty plea conviction for possessing a controlled substance with intent to distribute. *See* 21 U.S.C.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

§ 841(a)(1), (b)(1)(C). Reviewing under the plain error standard, we affirm. *See Puckett v. United States*, 556 U.S. 129, 135–36 (2009).

Although Merritt argues on appeal that the district court erred in considering unreliable factual recitations in the presentence report (PSR) concerning three unadjudicated juvenile arrests, he did not raise that argument in the district court. Instead, he objected to consideration of the mere fact of the arrests. That objection was not, as it should have been, sufficiently specific to alert the district court to the nature of the alleged error and to provide an opportunity for correction.¹ *See United States v. Nesmith*, 866 F.3d 677, 679 (5th Cir. 2017); *United States v. Duhon*, 541 F.3d 391, 396 (5th Cir. 2008); *see also* FED. R. CRIM. P. 51(b).

The district court properly exercised its significant discretion in its implicit determinations that the PSR’s recitations, based on police reports, concerning the juvenile offenses were reliable. *See United States v. Young*, 981 F.2d 180, 185 (5th Cir. 1992); *United States v. Vela*, 927 F.2d 197, 201 (5th Cir. 1991); *see also* U.S.S.G. § 6A1.3(a). The 1991 and 1992 offenses were both investigated in response to reports of illegal activity. Merritt’s 1994 offense resulted from a surveillance operation in which detectives found the contraband at issue near Merritt.

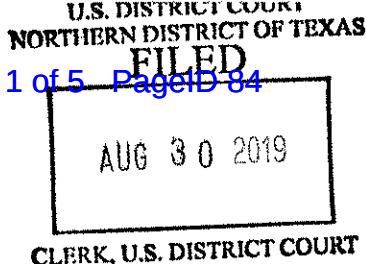
Because Merritt did not present competent rebuttal evidence, the district court was correct in adopting the PSR. *See United States v. Ford*, 558 F.3d 371, 377 (5th Cir. 2009); *United States v. Solis*, 299 F.3d 420, 455 (5th Cir.

¹ The Supreme Court’s decision in *United States v. Holguin-Hernandez* is inapplicable to this case of alleged procedural error, for *Holguin-Hernandez* did not change “what is sufficient to preserve a claim that a trial court used improper procedures in arriving at its chosen sentence.” 140 S. Ct. 762, 767 (2020).

2002). Thus, Merritt has failed to demonstrate error, much less clear or obvious error. *See Puckett*, 556 U.S. at 135–36.

AFFIRMED.

APPENDIX B



United States District Court

Northern District of Texas
Fort Worth Division

UNITED STATES OF AMERICA

§

v.

§

Case Number: 4:19-CR-088-A(01)

KEVIN MERRITT

§

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney Robert J. Boudreau. The defendant, KEVIN MERRITT, was represented by Federal Public Defender through Assistant Federal Public Defender Brook Antonio.

The defendant pleaded guilty on March 29, 2019 to the one count Information filed on March 21, 2019. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

<u>Title & Section / Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
21 U.S.C. §§ 841(a)(1) and (b)(1)(C) Possession of a Controlled Substance with Intent to Distribute	02/7/2019	1

As pronounced and imposed on August 30, 2019, the defendant is sentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, 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, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 235 months.

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

SUPERVISED RELEASE

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years and that while on supervised release, the defendant shall comply with the standard conditions ordered by this Court and shall comply with the following additional conditions:

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not unlawfully possess a controlled substance.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. The defendant shall refrain from any unlawful use of a controlled substance, submitting 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 pursuant to the mandatory drug testing provision of the 1994 crime bill.
5. The defendant shall 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 at the rate of at least \$25 per month.
6. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district where the defendant is being supervised without the permission of the Court or U.S. Probation Officer.
5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.
6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.

7. The defendant shall support his dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall 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.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. 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 U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit his at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. 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.
16. 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.

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 18 U.S.C. § 3583(f).

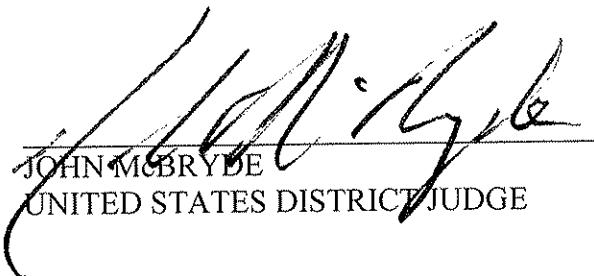
FINE

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 30th day of August, 2019.



JOHN MCBRYDE
UNITED STATES DISTRICT JUDGE

RETURN

I have executed the imprisonment part of this Judgment as follows:

Defendant delivered on _____, 2019 to _____
at _____, with a certified copy of this Judgment.

United States Marshal for the
Northern District of Texas

By _____
Deputy United States Marshal