

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL DESHAWN HOMER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

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

June 23, 2020

Lyle W. Cayce
Clerk

No. 19-11137
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MICHAEL DESHAWN HOMER,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:14-CR-141-1

Before CLEMENT, ELROD, and OLDHAM, Circuit Judges.

PER CURIAM:*

Michael Deshawn Homer appeals the revocation of his supervised release and 18-month sentence of imprisonment imposed 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. For the following reasons, we affirm.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

First, Homer 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. Badgett*, 957 F.3d 536, 539-41 (5th Cir. 2020).

Second, to the extent that Homer asserts error related to the § 3583(d) drug treatment exception to mandatory revocation under § 3583(g), it is not clear that § 3583(d) was applicable in this case. *See United States v. Brooker*, 858 F.3d 983, 986 (5th Cir. 2017). Accordingly, he fails to demonstrate any clear or obvious error with respect to the district court’s consideration of § 3583(d). *See Puckett*, 556 U.S. at 135.

Third, in light of our deferential abuse-of-discretion standard of review, we are unpersuaded that the 18-month sentence, which was seven months above the top of the advisory policy statement range, was substantively unreasonable. *See United States v. Warren*, 720 F.3d 321, 332 (5th Cir. 2013).

AFFIRMED.

APPENDIX B

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

United States District Court

Northern District of Texas
Lubbock Division

2015 MAR - 6 AM 10: 54

UNITED STATES OF AMERICA

DEPUTY CLERK CF

v.

Case Number 5:14-CR-141-01-C
USM No. 48707-177MICHAEL DESHAWN HOMER
Defendant.**JUDGMENT IN A CRIMINAL CASE**
(For Offenses Committed On or After November 1, 1987)

The defendant, MICHAEL DESHAWN HOMER, was represented by Charles S. Chambers.

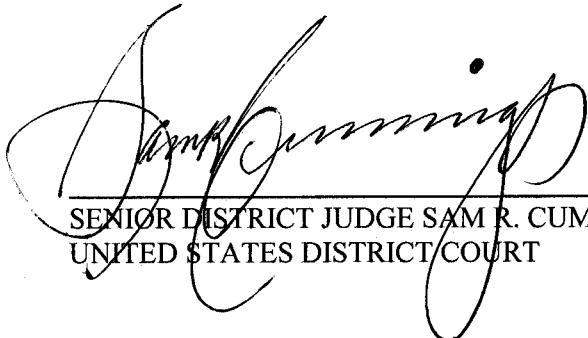
The defendant pleaded guilty to count 1 of the indictment filed on October 15, 2014. Accordingly, the court has adjudicated that the defendant is guilty of the following offenses:

<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), 924(a)(2), and 2	Convicted Felon in Possession of a Firearm and Aiding and Abetting	08/29/2014	1

As pronounced on March 6, 2015, 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, 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 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 6th day of March, 2015.


SENIOR DISTRICT JUDGE SAM R. CUMMINGS
UNITED STATES DISTRICT COURT

Defendant: MICHAEL DESHAWN HOMER
Case Number: 5:14-CR-141-01-C

Judgment--Page 2 of 4

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 37 months to run concurrently with any sentence imposed in Case No. 2014-403,690, 140th District Court, Lubbock County, Texas.

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: MICHAEL DESHAWN HOMER

Judgment--Page 3 of 4

Case Number: 5:14-CR-141-01-C

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

The defendant shall report to the Probation Officer in a manner and frequency directed by the Court or Probation Officer.

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 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, 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 (42 U.S.C. § 16901, *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.

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: MICHAEL DESHAWN HOMER

Judgment--Page 4 of 4

Case Number: 5:14-CR-141-01-C

SPECIAL CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

1. 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 \$10.00 per month.
2. The defendant shall participate in mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$10.00 per month.
3. The defendant shall abstain from the use of alcohol and all other intoxicants during the term of supervision.

CRIMINAL FORFEITURE

The defendant shall not contest the administrative or judicial forfeiture to the United States the Erma, Model LA22, .22-caliber pistol, Serial No. 35988, with five-rounds of ammunition.

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

(For **Revocation** of Probation or Supervised Release)

v.

MICHAEL DESHAWN HOMER

Case Number: **5:14-CR-00141-H(1)**

USM Number: **48707-177**

Lara M. Wynn

Defendant's Attorney

THE DEFENDANT:

<input checked="" type="checkbox"/>	admitted guilt to violation of condition(s)	Two Mandatory Conditions; Standard Condition No. 7; and Special condition No. 3 of the term of supervision.
<input type="checkbox"/>	was found in violation of condition(s)	after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
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See attached Petition
for Offender Under
Supervision.

A certified copy of the Judgment imposed on March 6, 2015, in the U.S. District Court, Northern District of Texas, Lubbock Division, is attached.

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has not violated condition(s) and is discharged as to such violation(s) condition.

It is 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 changes in economic circumstances.

Last Four Digits of Defendant's Soc. Sec. 1127

Defendant's Year of Birth: 1988

City and State of Defendant's Residence:
Lubbock, Texas

October 11, 2019

Date of Imposition of Judgment

Signature of Judge

James Wesley Hendrix
United States District Judge
Name and Title of Judge

October 11, 2019

Date

DEFENDANT: MICHAEL DESHAWN HOMER
CASE NUMBER: 5:14-CR-00141-H(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
Eighteen (18) months.

The court makes the following recommendations to the Bureau of Prisons: Incarceration at FCI Big Spring, Texas.

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

The defendant shall surrender to the United States Marshal for this district:

at a.m. p.m. on

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

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: MICHAEL DESHAWN HOMER
CASE NUMBER: 5:14-CR-00141-H(1)

SUPERVISED RELEASE

No further supervised release is ordered.

DEFENDANT: MICHAEL DESHAWN HOMER
 CASE NUMBER: 5:14-CR-00141-H(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$29.91	\$0.00	\$0.00		

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

*** 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.