

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL DAVID MANKIN,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

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Appendix A Judgment and Opinion of Fifth Circuit, CA No. CA No. 19-11262, dated July 24, 2020, United States v. Mankin, 813 F. App'x 162 (5th Cir. July 24, 2020) (unpublished).

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered May 30, 2006.

Appendix C Judgment of Revocation and Sentence of the United States District Court for the Northern District of Texas, entered November 7, 2019.

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 19-11262
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 24, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MICHAEL ADAIR MANKIN,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:05-CR-193-1

Before HIGGINBOTHAM, JONES, AND COSTA, *Circuit Judges.*

PER CURIAM:*

Michael Adair Mankin appeals the revocation of his supervised release and resulting 10-month term of imprisonment. Mankin's supervised release was revoked under 18 U.S.C. § 3583(g), which requires the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

revocation of supervised release and prison time for defendants found to have committed specified drug- or gun-related violations.

On appeal, Mankin argues for the first time 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. 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.*

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).

The judgment of the district court is AFFIRMED.

APPENDIX B

MAY 30 2006

CLERK, U.S. DISTRICT COURT

Deputy

UNITED STATES OF AMERICA

§

v.

§

Case Number: 4:05-CR-193-A(01)

MICHAEL ADAIR MANKIN

§

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney Paul Gartner. The defendant, MICHAEL ADAIR MANKIN, was represented by Federal Public Defender through Assistant Federal Public Defender Raymond Rodgers.

The defendant pleaded guilty on February 10, 2006 to the 1 count indictment filed on December 14, 2005. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number</u>
18 U.S.C. § 2113(a)	BANK ROBBERY	December 7, 2005	1

As pronounced and imposed on May 26, 2006, 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 188 months.

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

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years, and that while on supervised release:

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not possess illegal controlled substances.
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. If, upon commencement of the term of supervised release, any part of the \$532.00 restitution ordered by this judgment remains unpaid, the defendant shall make payments on such unpaid amount at the rate of at least \$20 per month, the first such payment to be made no later than 60 days after the defendant's release from confinement and another payment to be made on the same day of each month thereafter until the restitution amount is paid in full. Any unpaid balance of the restitution ordered by this judgment shall be paid in full 60 days prior to the termination of the term of supervised release.
5. 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 abstain from the use of alcohol and all other intoxicants during and after completion of treatment. The defendant shall contribute to the costs of services rendered at a rate of at least \$10 per month.
6. 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 pursuant to the mandatory drug testing provision of the 1994 crime bill.
7. 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 without the permission of the Court or U.S. Probation Officer.

5. The defendant shall report to the 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 or her 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 him or her 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 Title 18 United States Code section 3583(f).

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

RESTITUTION

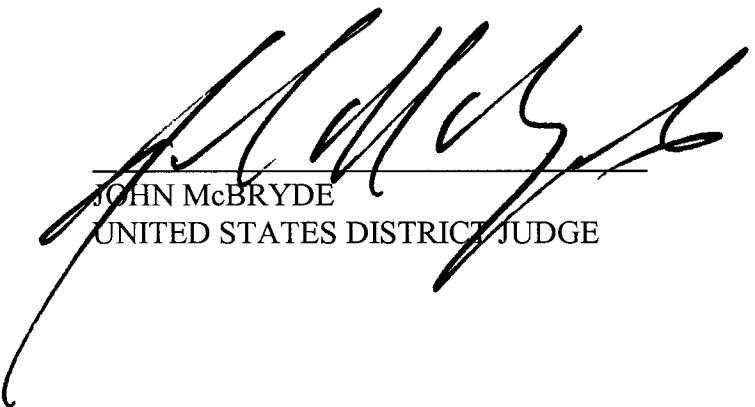
The court further ORDERS the defendant shall make full restitution in the amount of \$532.00. Restitution is payable immediately, but non-payment will not be a violation of defendant's conditions of supervised release so long as defendant pays as provided in defendant's conditions of supervised release. All restitution payments shall be made by defendant to the Clerk of the United States District Court, 501 West 10th Street, Room 310, Fort Worth, Texas 76102, for disbursement to the victim whose name and loss for which restitution is to be made is listed below:

National Bank of Texas
Attn: Rhonda Herriage, Senior Vice President/Cashier
P.O. Box 161969
Fort Worth, Texas 76161
There is no account no. associated with this loss amount.

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 30 day of May, 2006.


JOHN McBRYDE
UNITED STATES DISTRICT JUDGE

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

Defendant delivered on _____, 200____ to _____
at _____, with a certified copy of this
Judgment.

Randy Ely
United States Marshal for the
Northern District of Texas

By _____
Deputy United States Marshal

APPENDIX C

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CLERK, U.S. DISTRICT COURT
By _____ Deputy

NOV - 7 2019

UNITED STATES OF AMERICA

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VS.

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NO. 4:05-CR-193-A

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MICHAEL ADAIR MANKIN

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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, **MICHAEL ADAIR MANKIN**. After having considered the grounds of the government's motion, defendant's admissions, the evidence presented, and statements of and on behalf of defendant, 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 10 months and to serve a 26-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 May 26, 2006, and signed May 30, 2006, (the "underlying judgment") be, and is hereby, revoked; and

The court further ORDERS, ADJUDGES, and DECREES that defendant, **MICHAEL ADAIR MANKIN**, be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 10 months, to be followed by a term of supervised release of 26 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

condition of release number 4 regarding restitution is omitted (restitution having been paid), and standard condition of supervision number 4 is amended to read as follows:

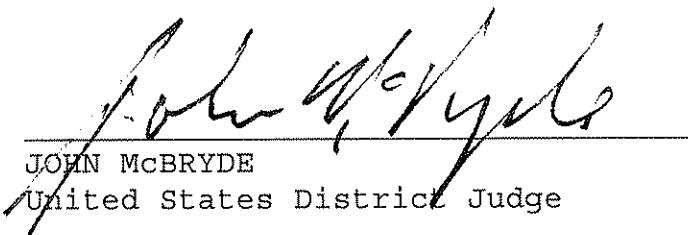
The defendant shall not leave the judicial district in which he is being supervised without permission of the Court or U.S. Probation Officer.

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 ordered into the custody of the United States Marshal.

The date of imposition of the sentence provided by this judgment is November 7, 2019.

SIGNED November 7, 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.