

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTINA ELIZABETH PANDEY,
Petitioner
v.

UNITED STATES OF AMERICA
Respondent

APPENDIX

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Northern District of Texas

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 12, 2020

No. 20-10246
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CHRISTINA ELIZABETH PANDEY,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CR-38-1

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

PER CURIAM:*

Appealing the judgment on revocation of supervised release, Christian Elizabeth Pandey argues, for the first time on appeal, that the district court erred by applying 18 U.S.C. § 3583(g), which mandates revocation of supervised release where a defendant violates the conditions of supervised

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

release by unlawfully possessing a controlled substance. Relying on *United States v. Haymond*, 139 S. Ct. 2369 (2019), Pandey contends that § 3583(g) is unconstitutional because it requires revocation of a term of supervised release and imposition of a term of imprisonment without affording the right to a jury trial. Pandey concedes that her argument is foreclosed under existing circuit precedent but raises the issue to preserve it for further possible review.

The Government has filed an unopposed motion for summary affirmance, asserting that the only issue on appeal is foreclosed by the decision in *United States v. Badgett*, 957 F.3d 536 (5th Cir. 2020). In the alternative, the Government moves for an extension of time to file its brief.

The Supreme Court held in *Haymond* that revocation of supervised release and imposition of a mandatory minimum sentence pursuant to 18 U.S.C. § 3583(k), based on judge-made findings by a preponderance of the evidence, violated due process and the right to a trial by jury. *Haymond*, 139 S. Ct. at 2378-83. However, the *Haymond* plurality emphasized that its decision was limited to § 3583(k). *Haymond*, 139 S. Ct. at 2382-84 & n.7. In *Badgett*, we held that because *Haymond* had not been extended to § 3583(g) revocations, the district court did not plainly err in applying the statute. *See Badgett*, 957 F.3d at 540-41.

Because the only issue on appeal is foreclosed, *see id.*, summary affirmance is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, the Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.

APPENDIX B

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FEB 20 2020
FILED
CLERK, U.S. DISTRICT COURT
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

UNITED STATES OF AMERICA

§

VS.

§

CHRISTINA ELIZABETH PANDEY

§

NO. 4:18-CR-038-A

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, CHRISTINA ELIZABETH PANDEY. After having considered the grounds of the government's motion, the evidence, defendant's admissions, 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 two consecutive terms of imprisonment of 15 months, one term for each count, for a total of 30 months imprisonment, and to serve a 30-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 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 in a criminal case imposed by the United States District Court for the Western District of Texas in case number W-11-CR-113 (03) signed November 21, 2011, imposed on defendant, CHRISTINA ELIZABETH PANDEY, be, and is hereby, revoked; and

The court further ORDERS, ADJUDGES, and DECREES that defendant, CHRISTINA ELIZABETH PANDEY, be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for two consecutive terms of 15 months, one

term for each count, for a total of 30 months imprisonment, to be followed by a term of supervised release of 30 months.

The court further ORDERS, ADJUDGES, and DECREES that, while on supervised release, defendant shall comply with the following Standard and Special Conditions of Supervision:

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, ammunition, destructive device, or other dangerous weapon.
3. The defendant shall not commit another federal, state, or local crime.
4. The defendant shall not possess illegal controlled substances.
5. The defendant shall provide to the U.S. Probation Officer any requested financial information.
6. The defendant shall not leave the judicial district in which she is being supervised without the permission of the U.S. Probation Officer.
7. 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.
8. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
9. The defendant shall support her dependents and meet other family responsibilities.

10. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
11. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
12. 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.
13. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
14. 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.
15. 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.
16. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
17. 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.
18. 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 she shall permit the probation officer to make such

notifications and to confirm the defendant's compliance with such notification requirement.

Special Conditions of Supervision

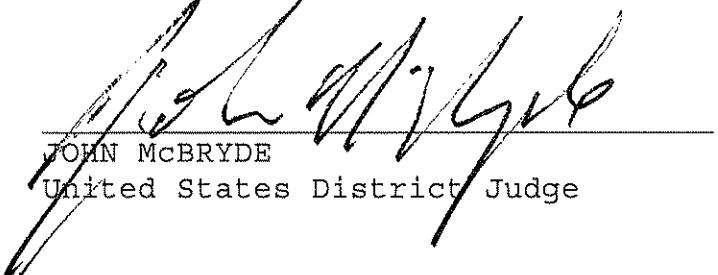
1. The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the probation officer.
2. The defendant shall participate in a program (inpatient and/or out-patient) 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 \$25 per month.
3. The defendant shall participate in mental health treatment services as directed by the probation officer until successfully discharged. Those services may include medications prescribed by a licensed physician. The defendant shall contribute to the costs of services rendered at a rate of at least \$25 per month.

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 February 20, 2020.

SIGNED February 20, 2020.



JOHN MCBRYDE
United States District Judge

Personal information about the defendant is set forth on the attachment to this Judgment of Revocation and Sentence.