

United States Court of Appeals For the First Circuit

No. 20-1150

UNITED STATES,

Appellee,

v.

GERALD J. SILVA,

Defendant - Appellant.

Before

Torruella, Lynch and Thompson,
Circuit Judges.

JUDGMENT

Entered: October 16, 2020

Defendant filed an untimely appeal from the revocation of his supervised release. After the government moved to dismiss the appeal as untimely, this court appointed counsel for defendant who argues, among other things, that the district court violated Federal Rule of Criminal Procedure 32(j) in not advising defendant of his right to appeal. However, "Rule 32 and its various subparts . . . simply do not apply to sentences imposed for supervised release violations. Procedures for supervised release revocation sentences are delineated in a separate rule: Federal Rule of Criminal Procedure 32.1." United States v. Daoust, 888 F.3d 571, 575 (1st Cir. 2018) (citations omitted). And Rule 32.1 says nothing about advising defendant of his right to appeal. We note, in addition, that at the time defendant was convicted of receipt and possession of child pornography, he was advised both of his right to appeal and of the time frame for doing so. Furthermore, the district court record is replete with references to defendant's right and ability to appeal an adverse supervised release determination. Finally, the government moved to dismiss the appeal as untimely, so dismissal is mandatory. See United States v. Reyes-Santiago, 804 F.3d 453, 478 (1st Cir. 2015). The appeal is dismissed.

By the Court:

Maria R. Hamilton, Clerk

cc:

David Shaughnessy, Gerald J. Silva, Lauren S. Zurier, Ronald R. Gendron