

No. 21-

IN THE
Supreme Court of the United States

EBONE JAZMINE MCAFEE ,

Petitioner,
v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit**

APPENDIX VOLUME

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APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 18, 2020

No. 20-50236
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

EBONE JAZMINE McAFFEE, *also known as JAZZY, also known as EBONE JASMINE McAFFEE,*

Defendant—Appellant,

CONSOLIDATED WITH

—
No. 20-50238
—

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

EBONE JAZMINE McAFFEE, *also known as JAZZY,*

Defendant—Appellant.

No. 20-50236
c/w No. 20-50238

Appeals from the United States District Court
for the Western District of Texas
USDC No. 7:16-CR-162-1
USDC No. 7:11-CR-330-1

Before JOLLY, ELROD, and GRAVES, *Circuit Judges*.

PER CURIAM:*

Ebone Jazmine McAfee appeals the sentences imposed on revocation of her terms of supervised release pertaining to a 2012 conviction for conspiracy to distribute and possess with intent to distribute cocaine base and a 2016 conviction for distribution of cocaine base. At a combined revocation hearing, the district court revoked supervised release and sentenced McAfee to 24 months in prison in each case with the sentences to run concurrently. Both sentences were above the applicable advisory range but not above the statutory maximum term of imprisonment. No further term of supervised release was ordered.

Generally, this court reviews a revocation sentence under the “plainly unreasonable” standard. *United States v. Miller*, 634 F.3d 841, 843 (5th Cir. 2011). Under that standard, this court first assesses whether the district court committed a ““significant procedural error.”” *United States v. Fuentes*, 906 F.3d 322, 325 (5th Cir. 2018) (quoting *United States v. Warren*, 720 F.3d 321, 326 (5th Cir. 2013)). If the sentence is procedurally sound, this court reviews the substantive reasonableness of the sentence for an abuse of discretion, examining the totality of the circumstances. *Id.*

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-50236
c/w No. 20-50238

McAfee argues that the revocation sentences were substantively unreasonable because the district court gave significant weight to an irrelevant or improper factor when upwardly departing and because the court did not account for factors that should have received significant weight. Because she did not raise these arguments in the district court, review is for plain error. *See Fuentes*, 906 F.3d at 325. To demonstrate plain error, McAfee must show a forfeited error that is clear or obvious and that affects her substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If she makes such a showing, this court has the discretion to correct the error but only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.*

The record does not clearly or obviously show that the district court gave significant weight to an irrelevant or improper factor or failed to account for factors that should have received significant weight. *See Warren*, 720 F.3d at 332. The district court explained that it had reviewed the policy statements contained in the Sentencing Guidelines and the applicable 18 U.S.C. § 3553(a) factors. The district court properly relied on the need to deter criminal conduct, the need to protect the public from further crimes, and the history and characteristics of the defendant when sentencing McAfee. Furthermore, the district court was allowed to impose any sentence within the appropriate statutory maximum term of imprisonment. *See 18 U.S.C. § 3583(e)(3); Warren*, 720 F.3d at 332. Thus, the district court did not plainly err in imposing the revocation sentences. *See Puckett*, 556 U.S. at 135. The judgments of the district court are AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

UNITED STATES OF AMERICA

Plaintiff

VS

(1) EBONE JAZMINE MCAFEE

Defendant

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Case No. MO-11-CR-00330-DC

ORDER REVOKING SUPERVISED RELEASE and
RESENTENCING OF DEFENDANT

On this the March 19, 2020, came on to be heard the Government's Motion for Revocation of Supervised Release granted by virtue of Judgment entered on November 21, 2016, in the above numbered and styled cause.

Defendant appeared in person and was represented by attorney of record, Luis Chavez. The United States was represented by Assistant United States Attorney, Monica Daniels.

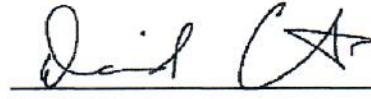
After reviewing the motion and the records in this case as well as hearing testimony and arguments of counsel, the Court is of the opinion that said Defendant has violated the provisions of his Supervised Release and that the ends of justice and the best interests of the public and of the Defendant will not be subserved by continuing said Defendant on Supervised Release. Further, the Court is of the opinion that the Motion for Revocation of Supervised Release should be, and it is hereby **GRANTED**.

IT IS THEREFORE ORDERED that the term of Supervised Release of Defendant named above granted by the Judgment entered on November 21, 2016, and it is hereby **REVOKE**D and **SET ASIDE** and the Defendant is resented as follows:

The Defendant, EBONE JAZMINE MCAFEE, is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of Twenty-Four (24) months. No further Supervised Release shall be imposed. Term to run concurrent with MO-16-CR-162.

The Clerk will provide the United States Marshal Service with a copy of this Order and a copy of the Judgment entered on November 21, 2016, to serve as the commitment of the Defendant.

Signed this 20th day of March, 2020.



David Counts
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

UNITED STATES OF AMERICA

Plaintiff

VS

(1) EBONE JAZMINE MCAFEE

Defendant

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§
§
§

Case No. MO-16-CR-00162-DC

ORDER REVOKING SUPERVISED RELEASE and
RESENTENCING OF DEFENDANT

On this the March 19, 2020, came on to be heard the Government's Motion for Revocation of Supervised Release granted by virtue of Judgment entered on November 21, 2016, in the above numbered and styled cause.

Defendant appeared in person and was represented by attorney of record, Luis Chavez. The United States was represented by Assistant United States Attorney, Monica Daniels.

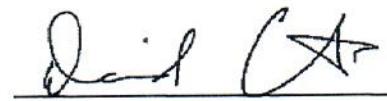
After reviewing the motion and the records in this case as well as hearing testimony and arguments of counsel, the Court is of the opinion that said Defendant has violated the provisions of his Supervised Release and that the ends of justice and the best interests of the public and of the Defendant will not be subserved by continuing said Defendant on Supervised Release. Further, the Court is of the opinion that the Motion for Revocation of Supervised Release should be, and it is hereby **GRANTED**.

IT IS THEREFORE ORDERED that the term of Supervised Release of Defendant named above granted by the Judgment entered on November 21, 2016, and it is hereby **REVOKE**D and **SET ASIDE** and the Defendant is resentenced as follows:

The Defendant, EBONE JAZMINE MCAFEE, is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of Twenty-Four (24) months. No further Supervised Release shall be imposed. Term to run concurrent with MO-11-CR-330.

The Clerk will provide the United States Marshal Service with a copy of this Order and a copy of the Judgment entered on November 21, 2016, to serve as the commitment of the Defendant.

Signed this 20th day of March, 2020.



David Counts
United States District Judge