

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

KENNETH WAYNE WALKER, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

/s/ Christopher A. Curtis

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INDEX TO APPENDICES

Appendix A Judgment and Opinion of Fifth Circuit, CA No. 20-10590, dated January 8, 2021, *United States v. Walker*, 832 F. App'x 915 (5th Cir. Jan. 8, 2021) (unpublished).

Appendix B Judgment of Revocation and Sentence of the United States District Court for the Northern District of Texas, entered June 10, 2020. *United States v. Walker*, Dist. Court 4:06-CR-079-Y.

Appendix C Amended Judgment and Sentence of the United States District Court for the Northern District of Texas entered December 14, 2006. *United States v. Walker*, Dist. Court 4:06-CR-079-Y.

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 8, 2021

Lyle W. Cayce
Clerk

No. 20-10590
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

KENNETH WAYNE WALKER, JR.,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:06-CR-79-3

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

PER CURIAM:*

Kenneth Wayne Walker, Jr., appeals the revocation of his supervised release and the sentence of 24 months of imprisonment and 60 months of supervised release imposed under 18 U.S.C. § 3583(g).

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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. 20-10590

Relying on *United States v. Haymond*, 139 S. Ct. 2369 (2019), Walker first argues § 3583(g) is unconstitutional because it requires the district court to revoke a defendant's supervised release and impose a prison sentence without affording the defendant the constitutional right to have the allegations proven to a jury beyond a reasonable doubt. Because Walker did not assert this argument in the district court, plain error review applies. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). Walker correctly concedes that his argument under plain error review is foreclosed. Because "there currently is no caselaw from either the Supreme Court or this court extending *Haymond* to § 3583(g) revocations, the district court could not have committed any clear or obvious error in applying the statute." *Badgett v. United States*, 957 F.3d 536, 541 (5th Cir. 2020) (internal quotation marks and citation omitted), *cert. denied*, 2020 WL 6551838 (U.S. Nov. 9, 2020) (No. 20-5851).

Walker next argues that his sentence is substantively unreasonable because, by treating revocation as mandatory under § 3583(g), the district court considered an improper factor and made a clear error of judgment in balancing the sentencing factors. He also argues that the district court's statements that his sentence would "address" his supervised release violations and serve as "deterrence" showed that the district court considered punishment, which is an improper factor in a revocation sentence. A district court may consider the factors under 18 U.S.C. § 3553(a) when imposing a sentence in connection with a mandatory revocation under § 3583(g), but it is not required to do so. *See United States v. Illies*, 805 F.3d 607, 609 (5th Cir. 2015).

Even assuming, *arguendo*, that treating his revocation as mandatory was an improper factor, the district court stated that it would have imposed the same sentence regardless of whether revocation was mandatory. Furthermore, Walker has not explained how the district court's other

No. 20-10590

statements evinced a desire to punish, assuming arguendo that the need to punish was an impermissible factor under § 3583(g). Accordingly, Walker has not shown that his sentence was substantively unreasonable. *See United States v. Warren*, 720 F.3d 321, 332 (5th Cir. 2013).

The district court's judgment is AFFIRMED.

APPENDIX B

United States District Court

Northern District of Texas
Fort Worth Division

UNITED STATES OF AMERICA

v.

KENNETH WAYNE WALKER JR.

JUDGMENT IN A CRIMINAL CASE for revocation of supervised release

Case number: 4:06-CR-079-Y (3)
Robert J. Boudreau, assistant U.S. attorney
Jaidee Serrano, attorney for the defendant

On June 9, 2020, a hearing was held, at which time the Court determined that the defendant, Kenneth Wayne Walker Jr., had violated his conditions of supervised release. Accordingly, the defendant is adjudged guilty of such violations, which involve the following conditions:

CONDITION	NATURE OF VIOLATION	VIOLATION CONCLUDED
Standard condition no. 7 and additional conditions	Using and possessing marijuana	December 2019; January, February, and May 2020
Addition condition	Failing to attend substance abuse treatment services at HOPE, Fort Worth, Texas	January 2020
Standard condition no. 9	Associating with persons convicted of a felony	December 2019 and January 2020
Additional condition	Committing robbery	March 2020
Additional condition	Possessing a firearm	March 2020

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

The defendant shall notify the United States attorney for this district within thirty (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.

Sentence imposed June 9, 2020.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed June 10, 2020.

IMPRISONMENT

The defendant, Kenneth Wayne Walker Jr., is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 24 months, pursuant to 18 U.S.C. § 3583(e)(3).

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall return to supervised release for a term of 60 months upon the same conditions as were imposed on November 27, 2006, in this case, case no. 4:06-CR-079-Y (3), in the United States District Court for the Northern District of Texas.

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

APPENDIX C

United States District Court

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

A M E N D E D
JUDGMENT IN A CRIMINAL CASE

UNITED STATES OF AMERICA

v.

KENNETH WAYNE WALKER JR

Case number: 4:06-CR-079-Y (3)
U.S. marshal's no: 35480-177
J. Michael Worley, assistant U.S. attorney
John Hopping, attorney for the defendant

On July 19, 2006, the defendant, Kenneth Wayne Walker Jr, entered a plea of guilty to count 2 of the three-count Indictment filed on May 10, 2006. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 U.S.C. § 841(a)(1) & (b)(1)(C) and 18 U.S.C. § 2	Distribution of Cocaine Base (Crack Cocaine) and Aiding and Abetting, a Class C Felony	June 13, 2005	2

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

All remaining counts are dismissed as to this defendant only upon motion of the government.

The defendant shall pay immediately a special assessment of \$100 for count 2 of the three-count Indictment.

The defendant shall notify the United States attorney for this district within thirty (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.

Sentenced imposed November 27, 2006
Amended December 14, 2006


TERRY R. MEANS

UNITED STATES DISTRICT JUDGE

Signed December 14, 2006

IMPRISONMENT

The defendant, Kenneth Wayne Walker Jr, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 240 months on count 2 of the three-count Indictment.

The Court recommends that the defendant be placed in the Institution Residential Drug Abuse Treatment Program, if qualified.

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 3 years on count 2 of the three-count Indictment.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and 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;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) 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; and
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. Probation Officer, pursuant to the Justice for All Act of 2004;

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;

refrain from any unlawful use of a controlled substance, submitting 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;

participate in a program approved by the U.S. Probation Office for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance abuse, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment and contributing to the costs of services rendered (co-payment) at the rate of at least \$20 per month; and

participate in mental health treatment services as directed by the U.S. Probation Officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered in an amount to be determined by the U.S. Probation Officer, based on ability to pay or availability of third-party payment.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

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