

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RODNEY LEDELL CARTER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

/s/ Adam Nicholson

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Appendix A Judgment and Opinion of Fifth Circuit, CA No. 19-11222, dated February 23, 2021, *United States v. Carter*, 837 F. App'x 308 (5th Cir. Feb. 23, 2021) (unpublished).

Appendix B Judgment of Revocation and Sentence of the United States District Court for the Northern District of Texas, Dist. Court 4:19-CR-00133-A-1, entered October 31, 2019.

Appendix C Judgment and Sentence of the United States District Court for the Eastern District of Oklahoma, Dist. Court 6:10-CR-00003-RAW, entered January 19, 2011.

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

February 23, 2021

Lyle W. Cayce
Clerk

No. 19-11222
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RODNEY LEDELL CARTER,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-133-1

Before DAVIS, STEWART, and DENNIS, *Circuit Judges*.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

United States Court of Appeals
for the Fifth Circuit

No. 19-11222
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 23, 2021

Lyle W. Cayce
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UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RODNEY LEDELL CARTER,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-133-1

Before DAVIS, STEWART, and DENNIS, *Circuit Judges*.

PER CURIAM:*

Rodney Ledell Carter appeals the judgment revoking the five-year supervised release term imposed on his conviction for possessing with intent to distribute cocaine base and imposing a new prison term. We affirm.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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. 19-11222

The Government moved under 18 U.S.C. § 3583(e)(3) to revoke supervised release on the basis that Carter violated his release terms by, *inter alia*, possessing controlled substances and possessing a firearm. Earlier, in a petition for offender under supervision, the probation office had alleged the same incidents as violations of mandatory conditions. That petition represented also that a Guidelines policy statement advised a revocation sentencing range of 21 to 27 months. Based on the violations alleged, Carter was subject to mandatory revocation under § 3583(g), which requires revocation and a term of imprisonment for defendants found to have committed certain gun or drug violations. Carter argued that the mandatory revocation provision was unconstitutional under *United States v. Haymond*, 139 S. Ct. 2369 (2019), which held that a different mandatory revocation provision, § 3583(k), violates the Fifth and Sixth Amendments. The district court revoked Carter's supervision and sentenced him to five years in prison with no additional term of supervised release.

Carter again argues that § 3583(g) is unconstitutional under *Haymond*. We recently rejected this exact argument, concluding that § 3583(g) “lacks the three features which led the Court to hold § 3583(k) unconstitutional.” *United States v. Garner*, 969 F.3d 550, 551 (5th Cir. 2020). Because of the differences between § 3583(k) and § 3583(g), the latter “is not unconstitutional under *Haymond*.” *Id.* at 553.

Additionally, reviewing for plain error, we reject Carter's new claim that the district court committed procedural error by failing to consider the Guidelines policy statements concerning revocation sentences and to calculate the sentencing range. *See United States v. Whitelaw*, 580 F.3d 256, 259 (5th Cir. 2009); *see also Gall v. United States*, 532 U.S. 38, 51 (2007). Under the plain error standard, the defendant, in addition to showing that a forfeited error is clear or obvious, i.e., not “subject to reasonable dispute,” must show that the error affects his substantial rights. *Puckett v. United*

No. 19-11222

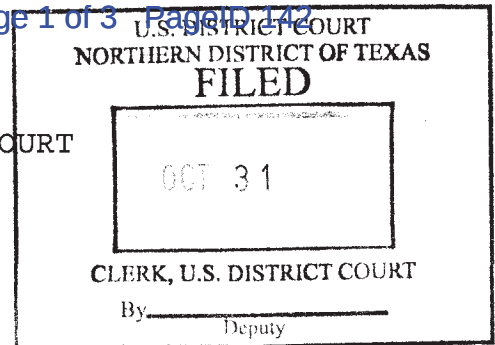
States, 556 U.S. 129, 135 (2009). If he discharges those burdens, we have “the *discretion* to remedy the error” —discretion that will not be exercised, however, if the error has no serious effect on “the fairness, integrity, or public reputation of judicial proceedings.” *Id.* (internal quotation marks and citation omitted).

Carter cites no authority for his proposition that a district court is required to consider the policy statements when revoking and sentencing under § 3583(g). In any event, and assuming such a requirement, it is at least reasonably debatable, and thus not clear or obvious, i.e., plain, that the district court erred by imposing sentence without at least implicitly determining the policy statement sentencing range. *See Puckett*, 556 U.S. at 135; *see also United States v. Ellis*, 564 F.3d 370, 377-78 (5th Cir. 2009). As shown by the judge’s signature at the end of the petition for offender under supervision, the district court reviewed that petition, which correctly calculated the sentencing range. In addition to the petition for offender under supervision, the district court was familiar with the motion to revoke. The district court specifically inquired about both the petition and the motion at the revocation hearing. Documents prepared for a district court by its probation officer are proper matters for the court to consider in the sentencing process. *See Pepper v. United States*, 562 U.S. 476, 488 (2011); *see also* 18 U.S.C. § 3602(a). Because it is highly improbable that the district court signed the petition and ordered a warrant to issue without knowing the petition’s contents, which included the policy statement sentencing range and the maximum sentence, Carter fails the plain error standard’s requirement that the claimed error not be subject to reasonable dispute. *See Puckett*, 556 U.S. at 135; *Ellis*, 564 F.3d at 377-78. Consequently, we need not proceed to consideration of the third and fourth prongs of that standard.

AFFIRMED.

APPENDIX B

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



UNITED STATES OF AMERICA

§

VS.

§

§ NO. 4:19-CR-133-A

§

RODNEY LEDELL CARTER

§

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, **RODNEY LEDELL CARTER**. After having considered the grounds of the government's motion, defendant's admissions, the evidence presented, argument of counsel, and the 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 5 years.

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 signed January 19, 2011, imposed on defendant on January 12, 2011, by the Hon. Ronald A. White, in Case No. CR-10-00003-001-RAW, in the United States District Court for the Eastern District of Oklahoma, be, and is hereby, revoked; and

The court further ORDERS, ADJUDGES, and DECREES that defendant, **Rodney Ledell Carter**, be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 5 years.

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

The date of imposition of the sentence provided by this judgment is October 31, 2019.

SIGNED October 31, 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.

APPENDIX C

UNITED STATES DISTRICT COURT

Eastern

District of

Oklahoma

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

RODNEY LEDELL CARTER

Case Number: CR-10-00003-001-RAW

USM Number: 56177-180

Robert Ridenour, AFD

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of Superseding Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21:841(a)(1), 841(b)(1)(A)(iii) and 18:2	Possession with Intent to Distribute Cocaine Base, aka Crack Cocaine, a Schedule II Controlled Substance	December 10, 2009	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to Title 18, Section 3553(a) of the United States Criminal Code.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 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. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

January 12, 2011

Date of Imposition of Judgment



Ronald A. White
United States District Judge
Eastern District of Oklahoma

E.O.D. January 19, 2011

Date

AO 245B (Rev. 06/05) Judgment in Criminal Case
Sheet 2 — Imprisonment

Judgment — Page 2 of 6

DEFENDANT: Rodney Ledell Carter
CASE NUMBER: CR-10-00003-001-RAW

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of: 132 months on Count 1 of the Superseding Indictment

■ The court makes the following recommendations to the Bureau of Prisons:

That the Bureau of Prisons evaluate the defendant and determine if the defendant is a suitable candidate for the Intensive Drug Treatment Program. Should the defendant be allowed to participate in the program, it is further recommended that the defendant be afforded the benefits prescribed and set out in 18 U.S.C. § 3621(e) and according to Bureau of Prisons' policy.

That the Bureau of Prisons allow the defendant to participate in the Career Starter program or a similar vocational training program during his term of incarceration and that the defendant be placed at the BOP facility located in Texarkana to facilitate family contact.

The Court also recommends that the BOP evaluate and determine if the defendant should be given credit toward this sentence for any time previously served in custody specifically the Court recommends since December 10, 2009, and further award the defendant credit for such time served in accordance with Bureau of Prisons policy. The Court shall be informed in writing as soon as possible if the Bureau of Prisons is unable to follow the Court's recommendations, along with the reasons for not following such recommendations made by the Court.

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

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at _____ ☐ a.m. ☐ p.m. on _____
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 12:00 Noon on _____
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Rodney Ledell Carter
CASE NUMBER: CR-10-00003-001-RAW

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 60 months on Count 1

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

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 court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) 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 probation officer.
- 10) 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 of the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) 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.
- 13) 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.
- 14) The defendant shall submit to urinalysis testing as directed by the Probation Office.

AO 245B (Rev. 06/05) Judgment in a Criminal Case
Sheet 3C — Supervised Release

Judgment—Page 4 of 6

DEFENDANT: Rodney Ledell Carter
CASE NUMBER: CR-10-00003-001-RAW

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in a program approved by the United States Probation Office for the treatment of narcotic addiction, drug dependency, or alcohol dependency, which will include testing to determine if he has reverted to the use of drugs or alcohol. If it is determined by the Probation Officer that the defendant is in need of a residential drug/alcohol treatment program, he shall participate in such treatment as directed by the Probation Officer and remain in the treatment facility until successfully discharged.

AO 245B (Rev. 06/05) Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties

Judgment — Page 5 of 6

DEFENDANT: Rodney Ledell Carter
CASE NUMBER: CR-10-00003-001-RAW

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$ 0.00	\$ 0.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ _____ 0	\$ _____ 0
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

App. C 005

19-11222.180

DEFENDANT: Rodney Ledell Carter
CASE NUMBER: CR-10-00003-001-RAW

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☐ Lump sum payment of \$ _____ due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☒ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
Said special assessment of \$100 shall be paid through the United States Court Clerk for the Eastern District of Oklahoma, P.O. Box 607, Muskogee, OK 74402, and is due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.