

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

BRANDON DEMON BLACKMON,

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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INDEX TO APPENDICES

- Appendix A Judgment and Opinion of Fifth Circuit, CA No. 20-10755 , dated April 16, 2021, *United States v. Blackmon*, 844 F. App'x 729 (5th Cir. 2021)(unpublished).
- Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered July 17, 2020. *United States v. Blackmon*, Dist. Court 3:19-CR-258-1.

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 20-10755
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 16, 2021

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BRANDON DEMON BLACKMON,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CR-258-1

Before HIGGINBOTHAM, JONES, and COSTA, *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. 20-10755
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 16, 2021

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BRANDON DEMON BLACKMON,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CR-258-1

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

PER CURIAM:*

Brandon Demon Blackmon pleaded guilty to two counts of possession of a firearm by a convicted felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The district court sentenced him to 46 months of imprisonment, applying a sentencing enhancement on the ground that Blackmon's prior

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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. 20-10755

conviction under the Texas aggravated assault statute constituted a crime of violence as defined by U.S.S.G. § 4B1.2. On appeal, Blackmon contends that the district court erred by including a special condition of supervised release in its written judgment that he attend “inpatient *and/or* outpatient” substance abuse treatment that conflicts with the oral pronouncement at his sentencing that he attend “*either* inpatient or outpatient” substance abuse treatment. Blackmon also contends that the district court erred in applying the sentencing enhancement, arguing that Texas aggravated assault does not constitute a crime of violence. Blackmon correctly concedes that the latter argument is foreclosed by our binding precedent in *United States v. Guillen-Alvarez*, 489 F.3d 197, 200-01 (5th Cir. 2007). *See United States v. Setser*, 607 F.3d 128, 131 (5th Cir. 2010).

When oral pronouncement is required, “[t]he key determination is whether [any] discrepancy between the oral pronouncement and the written judgment is a conflict or merely an ambiguity that can be resolved by reviewing the rest of the record.” *United States v. Mireles*, 471 F.3d 551, 558 (5th Cir. 2006). A conflict occurs “[i]f the written judgment broadens the restrictions or requirements of supervised release from an oral pronouncement,” *id.*, or imposes more burdensome conditions, *see United States v. Bigelow*, 462 F.3d 378, 383 (5th Cir. 2006).

Here, the written judgment did not necessarily create a conflict with the oral pronouncement. At the sentencing hearing, the district court informed Blackmon that he was to “participate in a program, either inpatient or outpatient, . . . for treatment,” while the court’s written judgment provided for “inpatient and/or outpatient treatment.” Although the latter could be interpreted as broadening the conditions of supervision, we read it as merely creating an ambiguity, as Blackmon could not feasibly participate in both types treatment programs at once. Together, we read the district

No. 20-10755

court's pronouncement and its judgment to say that Blackmon may have to participate in inpatient treatment and then, later, in outpatient treatment.

Accordingly, Blackmon's sentence is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

v.

BRANDON DEMON BLACKMON
Defendant.

JUDGMENT IN A CRIMINAL CASE

§

§

§

Case Number: **3:19-CR-00258-M(1)**USM Number: **59407-177****Gabriela Vega**

Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	Counts 1 and 2 of the Superseding Indictment, filed October 9, 2019.
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	Offense Ended	Count
18 USC 922(g)(1) and 924(a)(2) Possession of a Firearm by a Convicted Felon	02/03/2019	1s
18 USC 922(g)(1) and 924(a)(2) Possession of a Firearm by a Convicted Felon	02/03/2019	2s

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s)
 The original Indictment is 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.

July 17, 2020

Date of Imposition of Judgment

Signature of Judge

BARBARA M. G. LYNN
CHIEF UNITED STATES DISTRICT JUDGE

Name and Title of Judge

July 17, 2020

Date

DEFENDANT: BRANDON DEMON BLACKMON
CASE NUMBER: 3:19-CR-00258-M(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

FORTY-SIX (46) MONTHS as to Counts 1 and 2, to run concurrently for a total aggregate sentence of FORTY-SIX (46) MONTHS.

Pursuant to United States Sentencing Commission, Guidelines Manual, §5G1.3(c) (Nov. 2018), it is the Court's intent for the sentence to run concurrently with any sentence imposed in the defendant's pending cases of Unlawful Possession of a Firearm by a Felony, under Case No. F-1951862, and Unlawful Possession of a Firearm by a Felon, under Case No. F-1958306, which are both pending in the 363rd Judicial District Court of Dallas County, in Dallas; Criminal Mischief, under Case No. F-1958304, Evading Arrest Detention With Vehicle, under Case No. F-1958305, and Obstruction or Retaliation, under Case No. F-1958307, which are pending in the 363rd Judicial District Court of Dallas County in Dallas, and for the defendant to receive a sentence adjustment to account for any time spent in custody beginning on September 14, 2019 that the Bureau of Prisons will not credit under 18 U.S.C. §3585(b). If the Court could order the sentences to run concurrently, it would, so it is the Court's intention that the effect be the same as if the federal sentence ran concurrently from the date service of the state sentence began.

This sentence shall run consecutively to any sentence imposed for the defendant's pending charges of Driving While License Invalid, under Case No. 201700001514, pending in the Municipal Court of the City of Richardson in Richardson, Texas; Possession of Marijuana, under Case No. 2-84326-2019; Unlawful Carrying Weapon, under Case No. 2-84327-2019; and Possession of Controlled Substance, under Case No. 2-84329-2019, which are pending in the Collin County Court at Law 2 in McKinney; Unlawful Possession Firearm by Felon, under Case No. 366-81844-2019, and Possession of a Controlled Substance, under Case No. 366-81845-2019, which are both pending in the 417th Judicial District Court of Collin County in McKinney, as they are not related to the instant offense.

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

The Court recommends that the defendant be allowed to serve his sentence in the Dallas-Fort Worth area.

The Court recommends the defendant participate in the Residential Drug Abuse Program (RDAP), if eligible. If the defendant is not eligible, the court recommends the defendant participate in the maximum drug treatment program for which he is eligible.

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

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 UNITED STATES MARSHAL

DEFENDANT: BRANDON DEMON BLACKMON
CASE NUMBER: 3:19-CR-00258-M(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **THREE (3) YEARS.**

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.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must 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 you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: BRANDON DEMON BLACKMON
CASE NUMBER: 3:19-CR-00258-M(1)

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 in a manner and frequency directed by the court or probation officer;
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; and
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.

DEFENDANT: BRANDON DEMON BLACKMON
CASE NUMBER: 3:19-CR-00258-M(1)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in a program (inpatient and/or outpatient) 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/or all other intoxicants at any time. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$10 per month.

The defendant shall participate in mental health treatment or anger management services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$10 per month.

The defendant shall provide to the probation officer any requested financial information.

DEFENDANT: BRANDON DEMON BLACKMON
 CASE NUMBER: 3:19-CR-00258-M(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments page.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	\$200.00	\$0.00	\$0.00	\$0.00	

- The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- 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 the Schedule of Payments page 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:
- | | | |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

*** 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.

DEFENDANT: BRANDON DEMON BLACKMON
 CASE NUMBER: 3:19-CR-00258-M(1)

SCHEDULE OF PAYMENTS

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

- A** Lump sum payments 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 20 (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:
It is ordered that the Defendant shall pay to the United States a special assessment of \$200.00 for Counts 1s and 2s , which shall be paid immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

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
 See above for 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:**

Pursuant to the Oral Preliminary Order of Forfeiture, the defendant is to forfeit a Hi-Point Firearms, Model C9, 9-millimeter caliber pistol, serial No. P10007945 and a Cobra, Model FS (Freedom) Series 380, .380 caliber pistol, Serial No. F083991; and any ammunition recovered.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.