

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DONOVAN LEMONT BOOKMAN,

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

JASON HAWKINS
Federal Public Defender
Northern District of Texas
TX State Bar No. 00759763
525 Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
(214) 767-2886 Fax

Adam Nicholson **
Assistant Federal Public Defender
Northern District of Texas
TX State Bar No. 24097045
525 S. Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
(214) 767-2886

INDEX TO APPENDICES

- Appendix A Opinion of Fifth Circuit, CA No. 22-10030, dated July 5, 2022, *United States v. Bookman*, 2022 WL 2438435 (5th Cir. July 5, 2022) (unpublished).
- Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas entered December 13, 2006. *United States v. Bookman*, Dist. Court 4:05-CR-015-P.
- Appendix C Judgment of Revocation and Sentence of the United States District Court for the Northern District of Texas, entered January 10, 2022. *United States v. Bookman*, Dist. Court 4:05-CR-015-P.

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

July 5, 2022

Lyle W. Cayce
Clerk

No. 22-10030
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DONOVAN LEMONT BOOKMAN,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:05-CR-15-1

Before SMITH, STEWART, and GRAVES, *Circuit Judges*.

PER CURIAM:*

Donovan Lemont Bookman was sentenced to 26 months of imprisonment after he pleaded true to violating certain terms of the supervised release imposed following his 2005 conviction for possession of a firearm by a felon. On appeal, he challenges the constitutionality of

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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. 22-10030

18 U.S.C. § 3583(g), which mandates revocation of supervised release and a term of imprisonment for any offender who violates certain conditions of supervised release, including prohibitions on possessing a controlled substance.

Relying on *United States v. Haymond*, 139 S. Ct. 2369 (2019), Bookman contends that § 3583(g) is unconstitutional because it requires revocation of a term of supervised release and imposition of a term of imprisonment without affording the defendant the constitutionally guaranteed right to a jury trial. He concedes that his challenge is foreclosed by *United States v. Garner*, 969 F.3d 550 (5th Cir. 2020), *cert. denied*, 141 S. Ct. 1439 (2021), and he raises the issue to preserve it for further review. The Government has filed an unopposed motion for summary affirmance and, alternatively, for an extension of time to file its brief.

In *Garner*, we rejected the argument that Bookman has advanced and held that § 3583(g) is not unconstitutional under *Haymond*. *See Garner*, 969 F.3d at 551-53. Thus, Bookman's sole argument on appeal is foreclosed. Accordingly, the Government's motion for summary affirmance is GRANTED, its alternative motion for extension of time is DENIED, and the judgment of the district court is AFFIRMED. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

APPENDIX B

United States District CourtNorthern District of Texas
Fort Worth DivisionU.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED

DEC 13 2006

CLERK, U.S. DISTRICT COURT

By

Deputy

UNITED STATES OF AMERICA §

v. §

Case Number: 4:05-CR-015-A(01)

DONOVAN LEMONT BOOKMAN §

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney Mark L. Nichols. The defendant, DONOVAN LEMONT BOOKMAN, was represented by Federal Public Defender through Assistant Federal Public Defender Peter Fleury.

The defendant pleaded guilty on May 27, 2005 to the 1 count indictment filed on February 16, 2005. The court previously ORDERED that the defendant be adjudged guilty of such count involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number</u>
18 U.S.C. §§ 922(g)(1) and 924(e)	FELON IN POSSESSION OF A FIREARM	May 25, 2004	1

As pronounced and imposed on December 8, 2006, the defendant is re-sentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 180 months.

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

Certified a true copy of an instrument
on file in my office on Dec 14, 06
Clerk, U.S. District Court,
Northern District of Texas
By Michelle M. [Signature] Deputy
22-10030.276

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years, and that while on supervised release:

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not possess illegal controlled substances.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. 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 directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill.
5. 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 all other intoxicants during and after completion of treatment. The defendant shall contribute to the costs of services rendered at a rate of at least \$20 per month.
6. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall 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.
2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district without the permission of the Court or U.S. Probation Officer.
5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.
6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support his or her dependents and meet other family responsibilities.

8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall 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.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. 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 U.S. Probation Officer.
13. 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 by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. 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.
16. 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.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by Title 18 United States Code section 3583(f).

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 13 day of December, 2006.



JOHN McBRYDE
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

v.

Case Number: 4:05-CR-00015-P(01)

DONOVAN LEMONT BOOKMAN

U.S. Marshal's No.: 33809-177

JUDGMENT IN A CRIMINAL CASE

(For **Revocation** of Probation or Supervised Release)
(For Offenses Committed On or After November 1, 1987)

The defendant, DONOVAN LEMONT BOOKMAN, was represented by Andrea Aldana.

THE DEFENDANT:

Pled true to violating Paragraph II of the Petition for Offender Under Supervision, dated March 22, 2021. The Defendant also pled true to violating Paragraphs III and IV of the Addendum to Petition for Person Under Supervision, dated June 1, 2021.

See Petition for Offender Under Supervision.

Certified copy of the Judgment imposed on December 8, 2006, in the U.S. District Court for the Northern District of Texas, Fort Worth Division, is attached.

As pronounced on January 6, 2022, the defendant is sentenced as provided on page 2 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that the defendant shall 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 shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Signed January 10, 2022.



MARK T. PITTMAN
U.S. DISTRICT JUDGE

Judgment in a Criminal Case for Revocation
Defendant: DONOVAN LEMONT BOOKMAN
Case Number: 4:05-CR-00015-P(1)

Page 2 of 2

IMPRISONMENT

The defendant, DONOVAN LEMONT BOOKMAN, is hereby committed to the custody of the United States Bureau of Prisons (BOP) to be imprisoned for a term of **Twenty-Six (26) months**. No Additional Supervised Release Ordered.

The Court recommends to the Bureau of Prisons that the defendant serve his term of imprisonment at the FMC Fort Worth facility, if possible.

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

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