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United States Court of Appeals, Fifth Circuit.

UNITED STATES of
America, Plaintiff—Appellee,
v.
Brenda SENSING, Defendant—Appellant,
consolidated with
United States of America, Plaintiff—Appellee,
v.
Dennis Sensing, Defendant—Appellant.

No. 21-60662, No. 21-60691

FILED January 12, 2023

Appeals from the United States District Court for
the Northern District of Mississippi USDC Nos.
3:18-CR-154-1, 3:19-CR-40-1, [Sharion Aycock](#), U.S.
District Judge

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Justice Center.

Before [Stewart](#), [Willett](#), and [Oldham](#), Circuit Judges.

Opinion

Per Curiam: *

*1 Brenda and Dennis Sensing challenge the
revocation of their supervised release, arguing that
the district court violated a number of their statutory
and constitutional rights during three informal “show
cause” hearings. But because the Sensings each
admitted to at least one violation of their conditions of
supervised release at their formal revocation hearing,
and because each admitted violation independently
justifies the court's revocation decision, any errors
during the show-cause hearings were harmless. We
therefore AFFIRM.

I

The Sensings both pleaded guilty to conspiring to
defraud the United States, *see* 18 U.S.C. § 371,
by committing healthcare fraud and by paying and
receiving illegal remunerations. Upon conviction, the
Western District of Tennessee sentenced them to time
served and two years of supervised release. Relevant
to this appeal, the Sensings were also ordered to pay
\$627,267.25 in restitution.

The Sensings’ supervised release was transferred to
the Northern District of Mississippi. *See* 18 U.S.C. §
3605. There, the U.S. Probation Office filed a report
with the district court alleging that both Sensings had
violated the conditions of their release. Brenda, for
instance, had pleaded guilty to petit larceny, opened
new lines of credit without approval, and failed to
notify her probation officer about her receipt and use
of student-loan money. And Dennis had opened new
lines of credit without prior approval. The Sensings’
probation officer recommended that the court hold a
“Show Cause Hearing” as a result of these violations.
The court agreed and, intermittently over the next year
and a half, held three such hearings.

At the first show-cause hearing, the court verified that
the Sensings had, in fact, violated the conditions of
supervised release as alleged by the probation officer.
The court also focused on the outstanding amount
owed in restitution. After questioning the Sensings
about their assets and income, the court increased the
amount the Sensings were to pay monthly and ordered
the Sensings to turn over all the money in their bank
account and to sell one of their vehicles. The court also
encouraged the Sensings to voluntarily agree to extend

their term of supervised release, which they did. At the second and third hearings, the court focused solely on the Sensings' financial situation with an eye toward cutting their expenses, especially their monthly car payments. The court ultimately ordered the Sensings to sell two of their vehicles and to not make any major purchases.

Three weeks after the third hearing, the Sensings' probation officer moved the court to revoke the Sensings' supervised release on the basis of the original alleged violations and, additionally, the Sensings' failure to sell their vehicles as ordered by the court during the show-cause hearings. The court held a formal revocation hearing and appointed counsel, see *FED. R. CRIM. P. 32.1(b)(2)*, who argued, among other things, that the district court lacked authority to conduct the show-cause hearings without counsel present or to order the Sensings to sell their vehicles absent a showing that they were behind on their payments. The Sensings admitted, however, that they each had violated at least some conditions of their supervised release.

*2 After hearing the admissions and evidence, the court found that the Sensings had violated the conditions of their supervised release, as well as the court's show-cause orders to sell their vehicles, and it revoked their supervised release on this basis. Upon hearing mitigation evidence, however, the court declined to impose a term of imprisonment and instead sentenced the Sensings to three more years of supervised release.

The Sensings appealed the revocation, and we granted their motions to consolidate their appeals.

II

"We review for abuse of discretion a decision to revoke supervised release." *United States v. McCormick*,

54 F.3d 214, 219 (5th Cir. 1995). "A district court may revoke a defendant's supervised release if it finds by a preponderance of the evidence that a condition of release has been violated." *Id.*; see *18 U.S.C. § 3583(e)(3)*. We apply the harmless-error rule to revocation judgments, disregarding "[a]ny error, defect, irregularity, or variance that does not affect substantial rights." *FED. R. CRIM. P. 52(a)*; see *United States v. Jimison*, 825 F.3d 260, 262 (5th Cir. 2016); *United States v. Minnitt*, 617 F.3d 327, 332 (5th Cir. 2010); *United States v. English*, 400 F.3d 273, 276 (5th Cir. 2005). "Where there is an adequate basis for the district court's discretionary action of revoking [supervised release], the reviewing court need not decide a claim of error as to other grounds that had been advanced as a cause for revocation." *English*, 400 F.3d at 276 (quoting *McCormick*, 54 F.3d at 219 n.3).

On appeal, the Sensings raise a number of statutory and constitutional challenges to the district court's show-cause hearings and related orders. But they do not contest that they violated at least some of the conditions of their release, any of which is sufficient to justify revocation. See 18 U.S.C. § 3583(e)(3). Therefore, even if there were deficiencies in the show-cause hearings, such errors were harmless with respect to the court's ultimate decision to revoke their supervised release. See *McCormick*, 54 F.3d at 219 (affirming revocation, while rejecting legal challenges to the revocation hearing as harmless, where defendant did not contest that he violated the conditions of his supervised release).

AFFIRMED.

All Citations

Not Reported in Fed. Rptr., 2023 WL 167201

Footnotes

* This opinion is not designated for publication. See 5th Cir. R. 47.5.

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