

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DAVIN CHAZ NEVINS,

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/ Kevin Joel Page

JASON HAWKINS
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Appendix A Opinion of Fifth Circuit, CA No. 22-10320,
United States v. Nevins, 2023 WL 6213453 (5th Cir. Sept. 25, 2023)
(unpublished).

Appendix B Judgment and Sentence of the United States District Court
for the Northern District of Texas, entered September 16, 2020.
United States v. Nevins, Dist. Court 2:20-CR-24-Z-BR.

Appendix C Judgment Revoking Supervised Release of the United States District
Court for the Northern District of Texas, entered March 22, 2023.
United States v. Nevins, Dist. Court 2:20-CR-24-Z-BR.

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 23-10320
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
September 25, 2023

UNITED STATES OF AMERICA,

Lyle W. Cayce
Clerk

Plaintiff—Appellee,

versus

DAVIN CHAZ NEVINS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:20-CR-24-1

Before DAVIS, HAYNES, and HO, *Circuit Judges.*

PER CURIAM:*

Davin Chaz Nevins was sentenced to 37 months in prison and a three-year term of supervised release following his 2020 conviction for possessing a firearm after a felony conviction. His term of supervision was revoked in 2023. Relying on *United States v. Haymond*, 139 S. Ct. 2369 (2019), Nevins contends for the first time on appeal that 18 U.S.C. § 3583(g) is

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

No. 23-10320

unconstitutional because it requires revocation of supervised release and imposition of a term of imprisonment based on facts that need not be proved to a jury beyond a reasonable doubt.

The Government has filed an unopposed motion for summary affirmance or, in the alternative, for an extension of time to file its brief. The motion asserts that Nevins's argument is foreclosed by *United States v. Garner*, 969 F.3d 550 (5th Cir. 2020), which held that § 3583(g) is not unconstitutional under *Haymond*. *See Garner*, 969 F.3d at 551-53.

Nevins concedes his argument is foreclosed, explaining that he raises the issue to preserve it for further review. This concession is well founded, and thus summary affirmance is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, the Government's motion for summary affirmance is GRANTED, its alternative motion for an extension of time DENIED, and the judgment of the district court is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Amarillo Division

UNITED STATES OF AMERICA

v.

DAVIN CHAZ NEVINS

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:20-CR-24-Z-BR-(1)

U.S. Marshal's No.: 60219-177

Joshua Jerome Frausto, Assistant U.S. Attorney

Cristy J McElroy, Attorney for the Defendant

SEP 16 2020

CLERK, U.S. DISTRICT COURT
By *AC* Deputy

On May 13, 2020 the defendant, DAVIN CHAZ NEVINS, entered a plea of guilty as to Count One of the Information filed on April 27, 2020. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

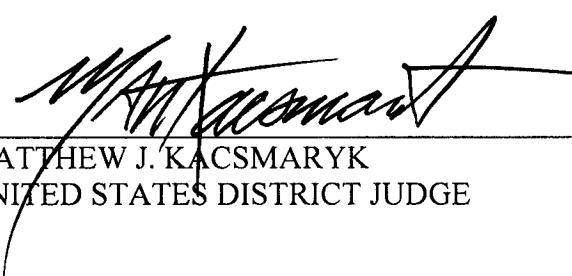
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	CONVICTED FELON IN POSSESSION OF A FIREARM	03/17/2020	One

The defendant is sentenced as provided in pages 2 through 4 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.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Information filed on April 27, 2020.

The defendant shall notify the United States Attorney for this district within thirty 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 September 15, 2020.


MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE

Signed September 16, 2020.

Judgment in a Criminal Case
Defendant: DAVIN CHAZ NEVINS
Case Number: 2:20-CR-24-Z-BR-(1)

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IMPRISONMENT

The defendant, DAVIN CHAZ NEVINS, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Thirty Seven (37) months as to Count One** of the Information filed on April 27, 2020.

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

1. that the Defendant be allowed to participate in a full mental health evaluation and be allowed to participate in any drug treatment and rehabilitation programs, including the Residential Drug Abuse Program, while in the custody of the Federal Bureau of Prisons, if eligible, if consistent with security classification;
2. that the Defendant be allowed to participate in courses to obtain his GED certificate and any vocational training, including barber courses, if eligible, if consistent with security classification; and
3. that the Defendant be assigned to FCI – El Reno, if possible, if eligible, if consistent with security classification.

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 **Three (3) years** as to Count One of the Information filed on April 27, 2020.

While on supervised release, in compliance with the Standard Conditions of supervision adopted by the United States Sentencing Commission at Section 5D1.3(c), the defendant shall:

1. The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.
3. The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.
4. The defendant shall answer truthfully the questions asked by the probation officer.

Judgment in a Criminal Case
Defendant: DAVIN CHAZ NEVINS
Case Number: 2:20-CR-24-Z-BR-(1)

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5. The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observes in plain view.
7. The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or the job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.
10. The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
13. The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

Also, as set forth in the Notice of Intent to Impose Conditions of Supervised Release signed and dated September 15, 2020, the Defendant shall comply with the below-listed other conditions of supervised release, which are derived from Sections 5D1.3(a), (b), (d), and (e), in relevant part:

1. The defendant shall not commit another federal, state or local offense.
2. The defendant shall not unlawfully possess a controlled substance.

Judgment in a Criminal Case
Defendant: DAVIN CHAZ NEVINS
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3. The defendant shall submit to the collection of a DNA sample from the defendant at the direction of the United States Probation Office if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000.
4. The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on supervised release and at least two periodic drug tests thereafter (as determined by the court) for the use of a controlled substance.
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/or all other intoxicants during and after completion of treatment. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$25 per month.

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.

FORFEITURE

Pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), it is hereby ordered that the Defendant's interest in the following property is condemned and forfeited to the United States: **A Walther, model PK380, pistol, serial #WB088045, including any ammunition, magazines, and/or accessories recovered with the firearm.**

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
Amarillo Division

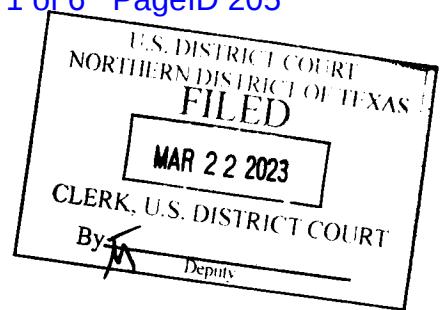
UNITED STATES OF AMERICA

v.

Case Number 2:20-CR-024-Z-BR-(1)

DAVIN CHAZ NEVINS
Defendant.

USM Number 60219-177



JUDGMENT IN A CRIMINAL CASE
(For **Revocation** of Probation or Supervised Release)
(For Offenses Committed On or After November 1, 1987)

The defendant, DAVIN CHAZ NEVINS, was represented by Eric Scott Coats.

THE DEFENDANT:

Pled true to violating Paragraphs I & II of the Petition for Person Under Supervision, signed January 26, 2023.

See Petitions for Offender Under Supervision.

Certified copy of the Judgment imposed on September 15, 2020, in the U.S. District Court for the Northern District of Texas, Amarillo Division, is attached.

As pronounced on March 21, 2023, 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: March 22, 2023


MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **Twenty-Four (24) months**.

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

1. that the Defendant be allowed to participate in any and all substance abuse treatment and rehabilitation, if possible, if eligible, if consistent with security classification;
2. that the Defendant be allowed to participate in vocational training for welding, if possible, if eligible, if consistent with security classification; and
3. that the Defendant be allowed to serve his term of incarceration at FCI Big Spring, if possible, if eligible, if consistent with security classification.

Defendant is remanded to the custody of the US Marshal.

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