FILED
United States Court of Appeal
Tenth Circuit

November 2, 2023

Christopher M. Wolpert
Clerk of Court

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JEREMY LEE SESTAK,

Defendant - Appellant.

No. 23-8006
(D.C. No. 2:19-CR-00099-SWS-1)
(D. Wyo.)

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**ORDER AND JUDGMENT***

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Before **HOLMES**, Chief Judge, **HARTZ**, and **MORITZ**, Circuit Judges.

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Jeremy Lee Sestak, proceeding pro se,[1] appeals the district court's order denying his motion to modify or terminate his supervised release conditions pursuant to 18 U.S.C. § 3583(e)(2).[2] We affirm.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

[1] We liberally construe Mr. Sestak's pro se filings, but we do not act as his advocate. *See James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

[2] In the motion, the government's response, and the district court's order, Mr. Sestak's last name is misspelled as "Sestek," *see, e.g.*, R., vol. V at 4, 13, 22, but we use the correct spelling in this decision.

In 2019, Mr. Sestak pleaded guilty to one count of distribution and attempted distribution of child pornography and one count of possession of child pornography. The district court sentenced him to 180 months' imprisonment followed by a ten-year term of supervised release. Mr. Sestak appealed from the district court's judgment, but we granted the government's motion to enforce the appeal waiver in his plea agreement and dismissed his appeal. *United States v. Sestak*, 794 F. App'x 799, 800 (10th Cir. 2020).

In 2022, Mr. Sestak filed a motion seeking to modify or terminate his term of supervised release pursuant to § 3583(e)(2). That statutory section provides that a court "may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration . . . of the term of supervised release." § 3583(e)(2). In his motion, Mr. Sestak did not identify any specific conditions of supervised release he sought to have modified. Instead, he argued "the supervised release term [was] illegal" and violated the double jeopardy protections of the Fifth Amendment. R., vol. V at 5. He asserted it "expos[ed] [him] to an unlimited number of prosecutions, penalties, or punishments originating from the same offense." *Id.* He asked the court to declare his term of supervised release unconstitutional and to terminate it.

The district court denied the motion, concluding that § 3583(e)(2) does not authorize it to modify Mr. Sestak's supervised release based on the illegality or unconstitutionality of the imposed term. The court explained that a direct appeal or 28 U.S.C. § 2255 motion are the correct procedural vehicles for bringing such a

challenge to the constitutionality of a sentence. Mr. Sestak now appeals from the district's order.

He argues: (1) his supervised release conditions, as applied, violate double jeopardy protections; (2) supervised release is a separate sentence; (3) his supervised release conditions, as applied, are excessive; (4) his as-applied challenge to supervised release conditions is permissible under § 3583(e)(2); and (5) he did not need to show new or changed circumstances in his § 3583(e)(2) motion. Having reviewed the briefs, the record, and the applicable legal authority, we are not persuaded by Mr. Sestak's appellate arguments. Instead, we agree with the district court's well-reasoned and well-stated resolution of Mr. Sestak's motion.

Accordingly, we affirm for substantially the same reasons stated in the district court's order dated January 11, 2023. We grant Mr. Sestak's motion for leave to proceed on appeal without prepayment of costs or fees.

Entered for the Court

Nancy L. Moritz
Circuit Judge

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157
Clerk@ca10.uscourts.gov

Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

November 02, 2023

Mr. Jeremy Lee Sestak
FCI - Englewood
9595 West Quincy Avenue
Littleton, CO 80123
#17437-091

**RE: 23-8006, United States v. Sestak**
Dist/Ag docket: 2:19-CR-00099-SWS-1

Dear Appellant:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Please contact this office if you have questions.

Sincerely,

Christopher M. Wolpert
Clerk of Court

cc: Timothy J Forwood
David A. Kubichek

CMW/klp