

No. \_\_\_\_\_

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In the

**Supreme Court of the United States**

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**Joshua Devon Barrow,**

*Petitioner,*

v.

**United States,**

*Respondent.*

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On Petition for a Writ of Certiorari  
to the Court of Appeals for the Fifth Circuit

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**PETITION APPENDIX**

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## Appendix A

# United States Court of Appeals for the Fifth Circuit

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No. 24-10157  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

May 29, 2025

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

JOSHUA DEVON BARROW,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 2:23-CR-49-1

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

PER CURIAM:\*

Joshua Devon Barrow appeals from the 60-month sentence imposed following the revocation of his term of supervised release. He argues that the district court erred by classifying his underlying offense as a Class A felony when determining the statutory sentencing range for his revocation sentence and that the imposed sentence was plainly unreasonable.

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

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We usually review the reasonableness of a revocation sentence using the two-step “plainly unreasonable” standard. *United States v. Cano*, 981 F.3d 422, 425 (5th Cir. 2020). First, we review the sentence for significant procedural error. *See id.* If no significant procedural error is present, then the next step is to consider whether the sentence was substantively reasonable. *Id.* When the issue is properly preserved, we review the substantive reasonableness of the sentence for an abuse of discretion. *Id.* A revocation sentence is substantively unreasonable if it “(1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors.” *United States v. Warren*, 720 F.3d 321, 332 (5th Cir. 2013) (internal quotation marks and citation omitted).

Barrow did not object to the classification of his underlying offense in district court, so this issue is reviewed only for plain error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009); *United States v. Kippers*, 685 F.3d 491, 497 (5th Cir. 2012). He interprets the plain language of 18 U.S.C. § 3583(e)(3) as requiring the district court to classify his underlying conviction based on the penalties that would be applicable today. However, the plain language does not sustain that interpretation, and his failure to provide any binding authority in support of his argument prevents him from showing reversible plain error on that basis. *See United States v. Alvarado-Casas*, 715 F.3d 945, 952 (5th Cir. 2013); *United States v. Gonzalez*, 792 F.3d 534, 538 (5th Cir. 2015).

Although Barrow preserved a challenge to the length of his revocation sentence by advocating for a shorter sentence, he did not object to the district court’s reliance on the factor that he challenges in this appeal. *See Holguin-Hernandez v. United States*, 589 U.S. 169, 173-75 (2020). His failure to object to that factor results in plain error review. *See Cano*, 981 F.3d at 425.

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Nevertheless, his challenge would fail even if the issue had been preserved. *See United States v. Sanchez*, 900 F.3d 678, 682, 687 (5th Cir. 2018).

The district court imposed an upward variance based on its conclusion that Barrow “routinely engaged in violent conduct,” but Barrow contends that the district court’s supporting references to the presentence report do not corroborate that statement. Barrow surmises that the district court based the upward variance on murder allegations, which were an improper factor for sentencing because they were unsubstantiated. Examination of the record does not support Barrow’s arguments, and he has not identified any other basis for challenging the substantive reasonableness of his sentence. *See Warren*, 720 F.3d at 332.

The district court’s judgment is AFFIRMED.

## Appendix B

United States District Court  
Northern District of Texas  
Amarillo Division

UNITED STATES OF AMERICA

v.

Case Number 2:23-CR-049-Z-BR-(1)

JOSHUA DEVON BARROW  
Defendant.

USM Number 42659-177

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

The defendant, JOSHUA DEVON BARROW, was represented by Richard Biggs.

**THE DEFENDANT:**

Pled true to violating Paragraphs I & II of the Amended Motion to Revoke Supervised Release filed on November 7, 2023.


**See Petitions for Offender Under Supervision.**

Certified copy of the Judgment imposed on June 25, 2012, in the U.S. District Court for the Western District of Texas, Midland Division, is attached.

As pronounced on February 13, 2024, 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: February 14, 2024.

  
MATTHEW J. KACSMARK  
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 **Sixty (60) months**. This sentence shall *run consecutively* to any sentence which may be imposed in Case Nos. 2:23-CR-038-Z-BR-(1) and 2:23-CR-050-Z-BR-(1) in the U.S. District Court for the Northern District of Texas, Amarillo Division.

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 to identify possible counseling and talk therapy options; be allowed to participate in a full medical evaluation to continue the drug regimen reflected in the PSR; and be allowed to participate in the most intensive substance abuse 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; and
2. that the Defendant be allowed to pursue educational courses in psychology and sociology and vocational training in welding, electrical and barbering, if possible, if eligible, if consistent with security classification; and
3. that the Defendant be allowed to serve his term of incarceration at FCI Bastrop, 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:

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Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

United States Marshal

By

Deputy Marshal