

United States Court of Appeals
for the Fifth Circuit

No. 25-10237

United States Court of Appeals
Fifth Circuit

FILED

February 11, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

FRANCISCO ORTIZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:10-CR-12-1

Before SOUTHWICK, WILLETT, and HO, *Circuit Judges.*

PER CURIAM:*

Francisco Ortiz was released from Texas state prison and arrested by U.S. Marshals for violating the terms of his supervised release. At his revocation hearing, Ortiz pled true to the allegations and requested a sentence of time served. The court referenced Ortiz’s past crimes and after a brief moment of confusion, stated: “I don’t think you can be rehabilitated quickly, so I’m going to give you 60 months.” Ortiz now argues that the

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

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sentencing court improperly imposed or extended his sentence to support his rehabilitation. We disagree and AFFIRM.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2009, Ortiz was the getaway driver in a bank robbery where a woman was shot and injured. He was subsequently arrested and pled guilty to a single count of using, carrying, brandishing, and discharging a firearm during and in relation to a crime of violence, and aiding and abetting. *See* 18 U.S.C. § 924(c)(1)(A). The District Court for the Northern District of Texas sentenced Ortiz to 150 months of imprisonment and 5 years of supervised release.

Ortiz was discharged and began his term of supervised release in November 2020. In August 2021, Ortiz was involved in an altercation after he attempted to steal lawn equipment from a vehicle. A gunfight ensued in which Ortiz fired several shots at three individuals before being shot himself. He was arrested, and the United States Probation Office filed a petition alleging that Ortiz had violated the terms of his supervised release by: (1) committing another crime,¹ (2) possessing a firearm, (3) failing to participate in drug testing and mental health treatment, and (4) failing to pay restitution. Revocation of his supervised release was mandatory, *see* 18 U.S.C. § 3583(g)(3), and the recommended advisory range for his sentence was 51 to 63 months, with a statutory maximum of 60 months. *See* 18 U.S.C. § 3583(e)(3).

Ortiz pled guilty in Texas state court to three counts of aggravated assault with a deadly weapon and was sentenced to five years. Immediately upon his release from state prison, Ortiz was arrested by U.S. Marshals and

¹ Ortiz pled guilty in Texas state court to three counts of aggravated assault with a deadly weapon and was sentenced to five years.

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pled true to each of the violations alleged. At his revocation hearing, Ortiz requested a sentence of time served, arguing that while in state custody, he “show[ed] an exemplary amount of rehabilitation.” The court then stated:

The Court: I’m going to give you 60 months in custody. I think that’s not more than it should be to carry out the purpose of our sentencing statute. You have a long list of offenses. And you . . . didn’t do much while you were out. And — hold on. You shot somebody. You shot somebody, right?

Counsel: He shot at someone, but he was actually shot himself.

The Court: Okay. All those things, I think, are such that *I don’t think you can be rehabilitated quickly*, so I’m going to give you 60 months. No supervised release.

Ortiz did not object to the sentence imposed or to the reasons provided by the court. He timely appealed.

DISCUSSION

On appeal, Ortiz argues that his sentence was unreasonable. First, he asserts that it was procedurally unreasonable because the district court “expressly relied on rehabilitation” in violation of 18 U.S.C. § 3582(a). *See Tapia v. United States*, 564 U.S. 319, 323 (2011). Second, he contends the sentence was “neither reasoned nor reasonable,” and in effect challenges its substantive reasonableness. *See Gall v. United States*, 552 U.S. 38, 46 (2007); *United States v. Nguyen*, 854 F.3d 276, 283 & n.5 (5th Cir. 2017).

We review sentencing decisions for reasonableness. *Nguyen*, 854 F.3d at 280. A defendant preserves an argument that his sentence was *substantively* unreasonable by “advocat[ing] for a sentence shorter than the one ultimately imposed.” *Holguin-Hernandez v. United States*, 589 U.S. 169,

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173 (2020); see *United States v. Zarco-Beiza*, 24 F.4th 477, 482 (5th Cir. 2022). If properly preserved, “then our review is the two-step ‘plainly unreasonable inquiry.’” *United States v. Cano*, 981 F.3d 422, 425 (5th Cir. 2020) (quoting *United States v. Sanchez*, 900 F.3d 678, 682 (5th Cir. 2018)). That inquiry asks first “whether the district court committed ‘significant procedural error, such as failing to consider the [applicable] factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence.’” *Id.* (citation omitted). We then “assess ‘the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard.’” *Id.* (citation omitted).²

As to procedural unreasonableness, and other errors relating to Ortiz’s sentence, we require the objection in the trial court to be “sufficiently specific to alert the district court to the nature of the alleged error and to provide an opportunity for correction.” *United States v. Wooley*, 740 F.3d 359, 367 (5th Cir. 2014) (quoting *United States v. Neal*, 578 F.3d 270, 272 (5th Cir. 2009)). If Ortiz failed to preserve his procedural challenge, he bears the burden of establishing plain error. See *United States v. Broussard*, 669 F.3d 537, 553 (5th Cir. 2012). “Under the plain error standard, when there was (1) an error below, that was (2) clear and obvious, and that (3) affected the defendant’s substantial rights, a court of appeals has the *discretion* to correct it but no obligation to do so.” *United States v. Galvan Escobar*, 872 F.3d 316, 319 (5th Cir. 2017) (quotation marks and citation omitted).

² Ortiz contends we should “reevaluate the standard of review for revocation sentences” because our precedent has “fallen unequivocally out of step with intervening Supreme Court precedent.” Whether that is true or not, we “may not overturn another panel’s decision, absent an intervening change in the law.” *Mercado v. Lynch*, 823 F.3d 276, 279 (5th Cir. 2016) (citation omitted). No such change exists here.

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“To be plain, legal error must be clear or obvious, rather than subject to reasonable dispute.” *Broussard*, 669 F.3d at 553 (quotation marks and citation omitted). “In the sentencing context, a defendant shows an error affected substantial rights if ‘the error increased the term of a sentence, such that there is a reasonable probability of a lower sentence on remand.’” *Galvan Escobar*, 872 F.3d at 319–20 (quoting *United States v. Escalante-Reyes*, 689 F.3d 415, 424 (5th Cir. 2012) (*en banc*)). Once an error is shown to be obvious and to have affected substantial rights, “we remedy the error ‘only if it seriously affected the fairness, integrity or public reputation of the judicial proceedings.’” *Id.* (quoting *United States v. Scott*, 821 F.3d 562, 571 (5th Cir. 2016)).

Here, Ortiz requested a sentence of time served before the district court imposed the 60-month statutory maximum. Thus, by advocating for a shorter sentence than the one imposed, he preserved an argument that his sentence was substantively unreasonable, and we apply our plainly unreasonable standard. *See Holguin-Hernandez*, 589 U.S. at 173. That general request, though, did not put the district court on notice of any alleged procedural errors. *See Wooley*, 740 F.3d at 367. Failure to allege procedural error in addition to seeking a shorter sentence means the *Tapia* issue is reviewed for plain error.³ *Id.*; *Cano*, 981 F.3d at 425.

³ After the Supreme Court’s decision that advocating for a shorter sentence preserves an appellate challenge that the sentence imposed was substantively unreasonable, this court held that such advocacy does not preserve a challenge that the trial court followed improper procedures when determining the sentence. *United States v. Coto-Mendoza*, 986 F.3d 583, 585–86 (5th Cir. 2021) (explaining that the “*Holguin-Hernandez* Court never addressed the issue of improper procedure” and discussing its limited holding); *see Zarco-Beiza*, 24 F.4th at 482 (declining to extend *Holguin-Hernandez* to the argument that the sentencing court improperly relied on a “bare arrest record”).

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I. Tapia Error

When determining the duration of imprisonment, a sentencing judge may consider “the factors set forth in [S]ection 3553(a) . . . , *recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation.*” 18 U.S.C. § 3582(a) (emphasis added). The relevant “factor[] set forth in [S]ection 3553(a)” is that the court shall consider “the need for the sentence imposed . . . to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.” 18 U.S.C. § 3553(a)(2)(D).

The Supreme Court provided clarity by explaining that “Section 3582(a) precludes sentencing courts from imposing or lengthening a prison term to promote an offender’s rehabilitation.” *Tapia*, 564 U.S. at 332. Soon after *Tapia*, we extended its reasoning to the revocation context, *see United States v. Garza*, 706 F.3d 655, 659 (5th Cir. 2013), and explained that “a sentencing court errs if a defendant’s rehabilitative needs are a *dominant factor* that informs the district court’s sentencing decision.” *Galvan Escobar*, 872 F.3d at 320 (emphasis added) (quoting *United States v. Pillault*, 783 F.3d 282, 290 (5th Cir. 2015)).

Rehabilitation being a *dominant* factor does not require proof that it was the “*sole* factor.” *Wooley*, 740 F.3d at 366. It is enough for the defendant to establish the sentencing court “impose[d]” or “lengthen[ed]” the defendant’s sentence “to ‘enable’ or ‘promote’ his rehabilitation.” *See Galvan Escobar*, 872 F.3d at 320 (quoting *Tapia*, 564 U.S. at 335).

On the other hand, a district court *does not* err where “the need for rehabilitation is only a ‘secondary concern’ or an ‘additional justification’ for the sentence.” *Pillault*, 783 F.3d at 290 (quoting *United States v. Walker*, 742 F.3d 614, 616 (5th Cir. 2014)). For instance, it is “not error to ‘discuss[] the opportunities for rehabilitation within prison or the benefits of specific

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treatment or training programs,’ . . . [and] a court [may even] ‘urge the BOP to place an offender in a prison treatment program.’” *United States v. Rodriguez-Saldana*, 957 F.3d 576, 579 (5th Cir. 2020) (first alteration in original) (quoting *Tapia*, 564 U.S. at 334).

A. Plain Error

Ortiz argues that the following statement by the sentencing judge was reversible error: “All those things, I think, are such that I don’t think you can be rehabilitated quickly, so I’m going to give you 60 months.” The Government argues the court’s statement was merely in response to Ortiz’s alleged “exemplary amount of rehabilitation.” Further, according to the Government, the full record establishes that the court relied on permissible factors and did not err by merely uttering the word “rehabilitation.”

Ortiz cannot show plain error because he has not established the sentencing court’s use of rehabilitation was a “clear and obvious” error. *See Galvan Escobar*, 872 F.3d at 319. Considering the full colloquy, the court’s statement *could* be interpreted as explaining why Ortiz’s state court sentence was not long enough, and that he should be incarcerated further to “carry out the purposes of [the] sentencing statute.”

Ortiz requested a sentence for time served, in part arguing that his time in Texas state prison had allowed him to become rehabilitated and that he was no longer dangerous to the public. Upon announcing the sentence, the court mentioned Ortiz’s “long list of offenses” and stated that 60 months was “not more than it should be to carry out the purposes of [the] sentencing statute.”⁴ In context, the term of imprisonment was not a means of

⁴ Those permissible “purposes” of the sentencing statute are: “retribution, deterrence, [and] incapacitation.” *Tapia*, 564 U.S. at 325; *see* 18 U.S.C. §§ 3551(a), 3553(a)(2)(A)–(C).

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advancing Ortiz’s rehabilitation, but instead an expression of disagreement with Ortiz’s position that his state prison sentence had made further federal confinement unnecessary. Stated differently, his four years in state prison were not long enough to reflect the seriousness of the offense, deter similar future conduct, or protect the public. *See* 18 U.S.C. §§ 3551(a), 3553(a)(2)(A)–(C).

While the court’s explanation of the sentence was brief, it is not “clear or obvious” that rehabilitation was a dominant factor merely because the court used the word “rehabilitation.” Instead, the dominant factors were likely the seriousness of the offense, as the court mentioned that Ortiz had shot at somebody, and Ortiz’s recidivism, as shown by what the court referred to as his “long list of offenses.” *See* 18 U.S.C. § 3553(a)(1) (allowing district courts to consider “the history and characteristics of the defendant”). Thus, a sentence of “time served” may not have adequately fulfilled the purposes of the sentencing statute. Ortiz cannot establish plain error.

II. Substantive Reasonableness

At the beginning of the revocation hearing, the court mistook Ortiz for another defendant, incorrectly stating he “took off for three years.” Later, when announcing Ortiz’s sentence, the court appeared surprised to discover that Ortiz had “shot somebody.” Ortiz argues that these facts render his revocation sentence unreasonable.

First, the sentence was procedurally sound. *See Gall*, 552 U.S. at 51. A “district court commits a significant *procedural* sentencing error by ‘selecting a sentence based on clearly erroneous facts.’” *United States v. Ibarra*, No. 24-20071, 2024 WL 5118485, *1 (5th Cir. Dec. 16, 2024) (unpublished) (emphasis added) (quoting *Gall*, 552 U.S. at 51); *see United States v. Rhine*, 637 F.3d 525, 528 (5th Cir. 2011). Ortiz does not argue that

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the sentence was based on clearly erroneous facts, and it was not. Any misunderstanding of the facts was quickly remedied and had no impact on the sentence imposed.

Second, our need to review for substantive unreasonableness considers the “totality of the circumstances,” *United States v. Brantley*, 537 F.3d 347, 349 (5th Cir. 2008) (citation omitted), but is nevertheless “highly deferential.” *See United States v. Hoffman*, 901 F.3d 523, 554 (5th Cir. 2018) (citation omitted). We will “vacate the sentence only if the identified error is ‘obvious under existing law,’ such that the sentence is not just unreasonable but *plainly* unreasonable.” *United States v. Sanchez*, 900 F.3d 678, 682 (5th Cir. 2018) (citation omitted).

Aside from Ortiz’s legal conclusion that the sentence was neither “reasoned nor reasonable,” *see Gall*, 552 U.S. at 59–60, he neither offers nor have we found any precedent supporting vacatur. The sentence was presumptively reasonable, *see United States v. Lopez-Velasquez*, 526 F.3d 804, 809 (5th Cir. 2008), and the sentencing court promptly corrected its factual misstatements. As a result, the sentence was not plainly unreasonable, and the sentencing court did not abuse its discretion.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) 3:10-CR-00012-B-1
)
 FRANCISCO ORTIZ,)
)
 Defendant.)

REVOCATION HEARING
BEFORE THE HONORABLE JANE J. BOYLE
UNITED STATES DISTRICT JUDGE
JANUARY 23, 2025

A P P E A R A N C E S

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25-10237.200

1 (In open court at 2:00 p.m.)

2 THE COURT: United States v. Francisco
3 Ortiz, Case Number 3:10-CR-012.

4 Who is here for the government?

5 MS. DEMERS: Your Honor, Claire Demers for
6 the United States.

7 MS. SULLIVAN: Andrenette Sullivan on
8 behalf of Mr. Ortiz.

9 THE COURT: Mr. Ortiz, are you ready to
10 go?

11 THE DEFENDANT: I am.

12 THE COURT: Have you talked to your
13 attorney about this?

14 THE DEFENDANT: I have.

15 THE COURT: At length?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. Raise your right hand,
18 please.

19 (The Defendant was sworn.)

20 THE DEFENDANT: So help me God, I do.

21 THE COURT: Okay. Mr. Ortiz, you took off
22 for three years.

23 MS. WILSON: No, it's the other one.

24 THE COURT: I'm sorry, no, you didn't take
25 off.

1 I should have taken a break there.

2 But you did some pretty bad things. Have
3 you read through the petition, the addendum to the
4 petition and the petition for violation?

5 THE DEFENDANT: I did, Your Honor.

6 THE COURT: That's dated 6/12/23, and it's
7 dated -- it's not dated. I don't know why it's not
8 dated, but it's not dated. There are two petitions.

9 Have you read through both of the
10 petitions?

11 THE DEFENDANT: I did, Your Honor.

12 THE COURT: Have you read through those
13 with your attorney?

14 THE DEFENDANT: Yes.

15 THE COURT: Have you read through each of
16 the violations?

17 Go ahead, read through all of them.

18 THE DEFENDANT: Yes.

19 THE COURT: Have you talked to her about
20 how you're going to plead to these violations?

21 THE DEFENDANT: Yes.

22 THE COURT: Ms. Sullivan, how is he going
23 to plead?

24 MS. SULLIVAN: He is pleading true to the
25 allegations in regards to that he did plead guilty

1 to the aggravated assault with a deadly weapon.

2 THE COURT: Which ones are they?

3 MS. SULLIVAN: That's subparagraph I.

4 THE COURT: Okay.

5 MS. SULLIVAN: So he did plead guilty in
6 state court to aggravated assault with a deadly
7 weapon.

8 THE COURT: How about II?

9 MS. SULLIVAN: He's pleading true to that.

10 THE COURT: III?

11 MS. SULLIVAN: He's pleading true to III
12 and true to IV in that no restitution was paid while
13 he was on supervised release.

14 THE COURT: Okay. Do you agree with that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Okay. Having pled true, I
17 find by a preponderance of the evidence that it is
18 true and you did commit these violations.

19 So go ahead, Ms. Sullivan.

20 MS. SULLIVAN: Yes, Your Honor. So
21 Mr. Ortiz -- I'll start with the more simple things.

22 So I see in subparagraph IV that Mr. Ortiz
23 currently has a balance of 54,744.07, and some
24 restitution was paid while Mr. Ortiz was in custody.

25 THE COURT: Good.

1 MS. SULLIVAN: So we would be asking that
2 you take into account that Mr. Ortiz was already
3 sentenced to five years in state court for the
4 underlying new law violation.

5 He was hoping to be transferred over to
6 federal court to provide some assistance. But
7 because he was not transferred to federal court, he
8 did provide assistance to local police during his
9 time between him pleaing guilty -- before he pled
10 guilty and sat in state court.

11 THE COURT: Yes.

12 MS. SULLIVAN: Also while in custody,
13 after speaking to Warden Parker from the United
14 States Department of Criminal Justice, he stated he
15 wished he could provide a letter on behalf of
16 Mr. Ortiz, but he wasn't allowed to do one.

17 While he was in custody at the Smith Unit,
18 he show an exemplary amount of rehabilitation. Not
19 only did he have a job while he was in the facility,
20 but there was a female correction officer that was
21 almost sexually assaulted but for Mr. Ortiz getting
22 involved.

23 THE COURT: Great. That's great.

24 MS. SULLIVAN: Also, while Mr. Ortiz was
25 on supervised release, there were no positive

1 urinalysis during that time on supervised release.
2 And because he didn't have a chance to plead guilty
3 in state court, come over to federal court and
4 resolve the supervised release violation, there was
5 no opportunity for him to be sentenced to the 51 and
6 60 months, since his statutory max is less than the
7 guideline max here and it be done concurrently.

8 Instead, if you were to give him what the
9 advisory guidelines say, then he's already done
10 around 4 years, 4 years and a couple of months.

11 THE COURT: In state court.

12 MS. SULLIVAN: Yes, Your Honor, and would
13 have to do an additional amount of time,
14 understanding that he must -- he must be punished
15 for the underlying offense. We don't agree with
16 some of the facts that are in I, but we do believe
17 that regardless, he did plead guilty to that charge.

18 THE COURT: Okay. Thank you. What would
19 you like to say? You have the absolute right to
20 speak.

21 THE DEFENDANT: I don't have anything to
22 say. I believe my attorney covered all bases, Your
23 Honor.

24 MS. SULLIVAN: For clarity, we would be
25 asking for time served.

1 THE COURT: I don't need to hear from the
2 government, unless you want to, but I don't need to
3 hear from you.

4 MS. DEMERS: That's all right, Your Honor.
5 If you don't want to hear from us, that works.

6 THE COURT: I'm going to give you 60
7 months in custody. I think that's not more than it
8 should be to carry out the purposes of our
9 sentencing statute. You have a long list of
10 offenses. And you were -- yes, and you didn't do
11 much while you were out. And -- hold on. You shot
12 somebody. You shot somebody, right?

13 MS. SULLIVAN: He shot at someone, but he
14 was actually shot himself.

15 THE COURT: Okay. All those things, I
16 think, are such that I don't think you can be
17 rehabilitated quickly, so I'm going to give you 60
18 months. No supervised release.

19 You can appeal this sentence if you want
20 to. If you want to appeal, Ms. Sullivan will do
21 that for you. Ask her to do it. Okay? And she has
22 two weeks from the date of my judgment, which will
23 probably be tomorrow or Monday. Okay?

24 THE DEFENDANT: Thank you, Your Honor.

25 THE COURT: Anything else?

1 THE DEFENDANT: No. Your Honor, I am a
2 former gang member. I dropped out. I debriefed
3 while in federal custody.

4 THE COURT: Good. Where do you want to
5 go?

6 THE DEFENDANT: I was at Tucson, Arizona,
7 and I don't know if they still facilitate former
8 gang members.

9 THE COURT: Tucson, Arizona, we'll send
10 you there.

11 THE DEFENDANT: Okay.

12 THE COURT: Okay. Anything else?

13 MS. DEMERS: Nothing further from the
14 government, Your Honor.

15 THE COURT: Thank you very much.

16 (Court in recess at 2:11 p.m.)
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