

October 21, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-50442  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDWARD DONOVAN CORNELISON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-98-CR-118-1  
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Before KING, Chief Judge, and JOLLY and STEWART, Circuit Judges.

PER CURIAM:\*

Edward Donovan Cornelison appeals his sentence following the revocation of his supervised release. His sole contention is that the district court erred when it did not sentence him to the low end of the Guideline range.

With respect to imprisonment after violation of supervised release, the Guidelines Manual sets forth "policy statements only." See Guidelines Manual, Chapter 7, Pt. A, ¶ 1. Thus, this court will uphold Cornelison's sentence unless it is in violation

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

of law or plainly unreasonable. United States v. Pena, 125 F.3d 285, 287 (5th Cir. 1997). The argument that a sentence promulgated after probation revocation is in error because it is not at the low end of the Guideline range is foreclosed by our holding in United States v. Teran, 98 F.3d 831, 836 (5th Cir. 1996), in which we held that there are no applicable Guidelines for sentencing after revocation of probation. See Pena, 125 F.3d at 287.

The district court implicitly considered the factors set forth in 18 U.S.C. § 3553(a). See Pena, 125 F.3d at 286-87. Additionally, Cornelison's original offense, possession with intent to distribute amphetamine in violation of 21 U.S.C. § 841(a)(1), is a Class C felony. 18 U.S.C. § 3559(a)(3); 21 U.S.C. § 841(b)(1)(C). A defendant whose supervised release term is revoked may not be required to serve more than two years in prison if the charge that resulted in the term of supervised release is a Class C felony. 18 U.S.C. § 3583(e)(3). Thus, the 24-month sentence did not exceed the maximum provided by statute and was therefore legal. See Pena, 125 F.3d at 288.

AFFIRMED.