

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

March 6, 2008

No. 07-10774
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

KENNETH LEE BUGG

Defendant - Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:99-cr-00079

Before STEWART, OWEN and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Kenneth Lee Bugg appeals his sentence of fourteen months' imprisonment, followed by thirty-four months of supervised release, because the period of supervised release exceeds the maximum permissible term by one day. In its Unopposed Motion to Modify the Judgment and Dismiss the Appeal, the government concedes that the district court's sentence exceeds the maximum term of supervised release permitted under 18 U.S.C. § 3583(h). The

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

government asks that we modify the district court judgment by reducing Bugg's supervised release term by one day and then dismiss Bugg's appeal; Bugg agrees that such a disposition would satisfactorily resolve his appeal.

Despite the parties' agreement, we are mindful that determining the proper sentence for a criminal defendant is a discretionary matter reserved to the district court. See *United States v. Levario-Quiroz*, 161 F.3d 903, 908-09 (5th Cir. 1998). Because the term of supervised release imposed in this case exceeds the statutory maximum, we VACATE Bugg's supervised release sentence and REMAND for re-sentencing in accordance with 18 U.S.C. § 3583(h).

In light of our decision to vacate and remand, the government's Unopposed Motion to Modify the Judgment and Dismiss the Appeal is DENIED.