

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

July 18, 2008

No. 07-51229
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

SCOTTY DUANE JACKSON

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:07-CR-1245-ALL

Before KING, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Upon revocation of his supervised release, Scotty Duane Jackson was sentenced to 15 months of imprisonment and an additional seven years of supervised release. Jackson now appeals that sentence, challenging only the reasonableness of the seven-year term of supervised release.

Because Jackson did not object to his sentence in the district court, review is limited to plain error. See *United States v. Lopez-Velasquez*, ___ F.3d ___, Nos.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

07-10151, 07-10321, 2008 WL 1874577 at *1 (5th Cir. Apr. 29, 2008). Jackson was initially convicted of possession with intent to distribute marijuana in violation of 21 U.S.C. § 841(a)(1). Section 841(b)(1)(C) provides for a maximum imprisonment term of 20 years, and Jackson's offense is thus a class C felony. 18 U.S.C. § 3559(a)(3). The statute of conviction authorizes a supervised release term of "at least" three years. § 841(b)(1)(C). However, the default supervised release statute, 18 U.S.C. § 3583(b)(2) limits the term of supervised release for Class C felonies to three years. In such a situation, a defendant must be sentenced to a supervised release term of "not less than nor more than three years." *United States v. Kelly*, 974 F.2d 22, 24 (5th Cir. 1992). In the case of an additional supervised-release term following revocation, we must also subtract from that statutorily-mandated three-year term the imprisonment term imposed upon revocation. 18 U.S.C. § 3583(h).

We correct overlong supervised release terms under plain error review. *United States v. Meshack*, 225 F.3d 556, 578 (5th Cir. 2000). Accordingly Jackson's additional supervised release term of seven years is hereby modified to 21 months. As modified, Jackson's sentence is affirmed.

SENTENCE MODIFIED and, as modified, AFFIRMED.