

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

September 15, 2011

Lyle W. Cayce
Clerk

No. 11-50178
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

KEVIN WAYNE BROWN,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:07-CR-91-1

Before BENAVIDES, STEWART and CLEMENT, Circuit Judges.

PER CURIAM:*

Kevin Wayne Brown appeals the 18-month sentence imposed by the district court following the revocation of his supervised release. Brown argues that the term of imprisonment, which was outside of the advisory guidelines range of six to 12 months, was unreasonable.

This court recently determined that revocation sentences are ordinarily reviewed under a “plainly unreasonable standard.” *United States v. Miller*, 634 F.3d 841, 843 (5th Cir. 2011), *petition for cert. filed* (May 27, 2011) (No. 10-

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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10784). We review Brown's sentence, however, for plain error because he failed to object to his sentence in the district court. *See United States v. Whitelaw*, 580 F.3d 256, 259-60 (5th Cir. 2009).

Because the 18-month sentence Brown received on revocation is not greater than the term authorized by statute, it is "clearly legal." *United States v. Pena*, 125 F.3d 285, 288 (5th Cir. 1997). We have consistently upheld revocation sentences exceeding the guidelines range but not exceeding the statutory maximum. *See, e.g., Whitelaw*, 580 F.3d at 265; *United States v. Jones*, 484 F.3d 783, 791-93 (5th Cir. 2007). Brown essentially asks this court to substitute his view of what an appropriate sentence would be for that of the district court, which we will not do. *See Gall v. United States*, 552 U.S. 38, 51 (2007). Brown has not shown plain error. *See Puckett v. United States*, 129 S. Ct. 1423, 1429 (2009).

AFFIRMED.