

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

No. 12-50703
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 30, 2014

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

JOANNE MICHELLE UPTON,

Defendant–Appellant.

Appeal from the United States District Court
for the Western District of Texas
No. 4:12-CR-68-3

Before SMITH, WIENER, and ELROD, Circuit Judges.

PER CURIAM:*

Pursuant to a plea agreement, Joanne Upton pleaded guilty of aiding

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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and abetting the importation of 100 kilograms or more but less than 1,000 kilograms of marihuana into the United States. She claims that her sentence should be vacated in part and remanded to allow the district court to conform the written judgment to its oral pronouncement relative to two special conditions of supervised release.

More specifically, as to the travel restriction, Upton contends that (1) the prohibition against “resid[ing]” within the enumerated judicial divisions should be deleted, and (2) language should be added to provide that she may seek permission from the probation officer to travel within the divisions. As for the restriction on contact with others, Upton contends that the written condition should be modified to reflect that it applies only to Jody Benningfield and Natalie Benningfield, not all of Upton’s codefendants. In its unopposed motion to modify the written judgment, the government agrees that the written judgment should be amended to conform to the oral pronouncement.

The record supports the parties’ assertion that there is a conflict between the oral pronouncement of sentence and the written judgment as outlined above; thus, the oral pronouncement controls. *United States v. Mireles*, 471 F.3d 551, 557–58 (5th Cir. 2006); *United States v. Martinez*, 250 F.3d 941, 942 (5th Cir. 2001). Accordingly, this matter is REMANDED for the district court to amend its written judgment to conform to its oral pronouncement of sentence. *See Mireles*, 471 F.3d at 558; *Martinez*, 250 F.3d at 942.

The Government’s unopposed motion to modify the written judgment is GRANTED in part and DENIED in part. To the extent the government requests that the judgment be affirmed, the motion is granted. To the extent the government requests this court to modify the sentence without a remand, the motion is denied. The government’s alternative motion for an extension of time to file its brief is DENIED as moot.