

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

United States Court of Appeals
Fifth Circuit

FILED

June 4, 2020

Lyle W. Cayce
Clerk

No. 19-10749
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

J. SANTOS MONDRAGON-BENITEZ,

Defendant-Appellant

Appeals from the United States District Court
for the Northern District of Texas
USDC No. 4:13-CR-71-1

Before WIENER, HAYNES, and COSTA, Circuit Judges.

PER CURIAM:*

Defendant-Appellant J. Santos Mondragon-Benitez has appealed the district court's judgment revoking his three-year term of supervised release and imposing a 24-month sentence of imprisonment. He contends that the district court relied on a prohibited sentencing factor under 18 U.S.C. § 3553(a)(2)(A)—the need for the sentence imposed to promote respect for the law—when fashioning the revocation sentence.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Ordinarily, revocation sentences are reviewed under a “plainly unreasonable” standard. *United States v. Miller*, 634 F.3d 841, 843 (5th Cir. 2011). When a claim of error has not been preserved, the plain error standard of review applies. *Puckett v. United States*, 556 U.S. 129, 135 (2009). Because Mondragon-Benitez’s claim fails even under the ordinary plainly unreasonable standard, this court need not decide if the plain error standard applies here. *See United States v. Sanchez*, 900 F.3d 678, 682 (5th Cir. 2018).

Pursuant to 18 U.S.C. § 3583(e), a district court may not rely on the sentencing factors listed in § 3553(a)(2)(A), including the need for the sentence imposed to promote respect for the law, when modifying or revoking a supervised release term. *Miller*, 634 F.3d at 844. Mondragon-Benitez’s assertion that the district court relied on the prohibited respect-for-the-law factor is based on two oral statements made by the district court during the revocation hearing: (1) that the district court had considered the issues discussed in Mondragon-Benitez’s illegal reentry sentencing hearing, which immediately preceded the revocation hearing and (2) that his repeated illegal reentries were inexcusable and perhaps reflected his belief that the laws of the United States were meaningless and that he could do whatever he wanted to do. According to Mondragon-Benitez, these statements establish that the district court impermissibly relied on the need to promote respect for the law when choosing a 24-month sentence, which was greater than the recommended range of eight to fourteen months.

Mondragon-Benitez’s contentions are without merit. Not only did the district court fail to expressly reference the prohibited factor, it also explicitly noted that it had considered the sentencing factors under 18 U.S.C. 3553(a) “*as considered in a revocation context.*” (emphasis added). It also implicitly referenced the permissible factors of deterrence and protection of the public.

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These facts are enough to warrant our affirmance. *See Sanchez*, 900 F.3d at 684-85. But, even if the district court considered the prohibited factor, it was not a dominant factor in the sentencing decision. No reversible error occurred. *See United States v. Rivera*, 784 F.3d 1012, 1017 (5th Cir.), *reh'g denied*, 797 F.3d 307 (5th Cir. 2015).

Mondragon-Benitez has not shown that the revocation sentence was plainly unreasonable. *See Miller*, 634 F.3d at 843.

The judgment of the district court is AFFIRMED.