

United States Court of Appeals
for the Fifth Circuit

No. 19-11262
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 24, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MICHAEL ADAIR MANKIN,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:05-CR-193-1

Before HIGGINBOTHAM, JONES, AND COSTA, *Circuit Judges.*

PER CURIAM:*

Michael Adair Mankin appeals the revocation of his supervised release and resulting 10-month term of imprisonment. Mankin's supervised release was revoked under 18 U.S.C. § 3583(g), which requires the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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

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revocation of supervised release and prison time for defendants found to have committed specified drug- or gun-related violations.

On appeal, Mankin argues for the first time that § 3583(g) is unconstitutional in light of *United States v. Haymond*, 139 S. Ct. 2369 (2019), because it does not require a jury determination of guilt beyond a reasonable doubt. Review of this unpreserved issue is for plain error, which requires him to show (1) an error that has not been affirmatively waived, (2) that is clear or obvious, and (3) that affected his substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). If he can satisfy those three prongs, this court has the discretion to correct the error if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *See id.*

Haymond addressed the constitutionality of § 3583(k), and the plurality opinion specifically disclaimed expressing any view of the constitutionality of § 3583(g). *See Haymond*, 139 S. Ct. at 2382 n.7. In the absence of precedent from either the Supreme Court or this court extending *Haymond* to § 3583(g), we conclude that there is no clear or obvious error. *See Puckett*, 556 U.S. at 135; *United States v. Evans*, 587 F.3d 667, 671 (5th Cir. 2009).

The judgment of the district court is AFFIRMED.