

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

United States Court of Appeals
Fifth Circuit

FILED

April 8, 2020

Lyle W. Cayce
Clerk

No. 19-40939
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DANIEL MATA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:14-CR-246-1

Before STEWART, HIGGINSON, and COSTA, Circuit Judges.

PER CURIAM:*

Appealing the concurrent prison terms imposed upon revocation of his supervised release, Daniel Mata contends that the district court erroneously relied on improper factors in determining the sentence of 12 months and a day. He asserts that, throughout the hearing, the court considered the seriousness of his supervised release violations and the underlying offenses, the need to punish him for that conduct, and his need for rehabilitative treatment as 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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dominant factors in determining his sentence. Because he did not object on this ground in the district court, we review for plain error. *See United States v. Rivera*, 784 F.3d 1012, 1016 (5th Cir. 2015).

When imposing a revocation sentence under 18 U.S.C. § 3583(e), the district court may not consider the seriousness of the supervised release violation or the need to punish the defendant for that conduct. *United States v. Sanchez*, 900 F.3d 678, 683-84 & n.3 (5th Cir. 2018); *Rivera*, 784 F.3d at 1014, 1017-18. Nor can the court consider the seriousness of the underlying offense or the need to punish the defendant for that offense. *United States v. Miller*, 634 F.3d 841, 844 (5th Cir. 2011). The district court also is prohibited from relying on the defendant's need for rehabilitative treatment in determining the length of his prison sentence. *See* 18 U.S.C. § 3582(a); *Tapia v. United States*, 564 U.S. 319, 321, 334-35 (2011); *United States v. Wooley*, 740 F.3d 359, 363-64 (5th Cir. 2014). The court errs when one of these considerations is a "dominant factor" in the revocation sentence. *Rivera*, 784 F.3d at 1017; *Wooley*, 740 F.3d at 364.

Mata asserts that, by expressing exasperation with his supervised release violations, the district court was focusing on the seriousness of that conduct. He contends that the court's use of "retributive-sounding" words, including its reference to his "horrible" criminal record and history of drug addiction, showed that the court sought to punish him. We find no error, however, plain or otherwise. The district court did not state or imply that it was relying on the seriousness of Mata's conduct or the need to punish him for it. *See Sanchez*, 900 F.3d at 684-85; *Rivera*, 784 F.3d at 1014-17; *Miller*, 634 F.3d at 844. Instead, its reasons implied that it was relying on several proper factors for determining the sentence: the nature and circumstances of Mata's supervised release violations (repetitive and dismissive of court advice and

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instructions), his history and characteristics (longstanding drug addiction, frequent relapses, and pattern of making excuses instead of taking responsibility for his actions), and the need for deterrence after two lenient revocation sentences failed to achieve compliance with the requirements of supervision. *See* § 3583(e); 18 U.S.C. § 3553(a); *Miller*, 634 F.3d at 844.

Nor do we find merit in Mata's assertion that the district court improperly considered his need for rehabilitative treatment in determining the prison sentence. *See Tapia*, 564 U.S. at 321, 334-35; *Wooley*, 740 F.3d at 363-64. Although the court repeatedly discussed Mata's drug addiction and need for treatment, it did not lengthen his prison term to allow for that treatment. Instead, the court imposed conditions of supervised release that will require him to undergo substance abuse and mental health treatment and to spend up to 120 days in a reentry center receiving intensive substance abuse therapy. Although the court added a day to his sentence to allow him to qualify for early release, there was no suggestion that the day was added so that Mata could obtain treatment. The record indicates that it was an act of leniency.

The judgment is AFFIRMED.