United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
October 19, 2023
Lyle W. Cayce
Clerk

No. 23-10394
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BYRON CHRISENBERRY,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:07-CR-3-14

Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:[*]

Byron Chrisenberry's supervised release was revoked and he was sentenced to a seven-month term of imprisonment and a 48-month period of supervised release. Chrisenberry has appealed the sentence, asserting that certain conditions of supervised release imposed by the district court conflict

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

with and are more onerous than conditions imposed in the district court's original judgment, which the district court adopted.

Where, as here, a defendant objects to a condition of supervised release for the first time on appeal, the standard of review depends upon whether the defendant had an opportunity to object in the district court. *See United States v. Martinez*, 47 F.4th 364, 366 & n.1 (5th Cir. 2022). If an opportunity was provided, our review is for plain error; if not, it is for an abuse of discretion. *Id.* at 366.

To prevail on plain error review, Chrisenberry must show a forfeited error that is clear or obvious and that affects his substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes this showing, this court has the discretion to correct the error only if it "seriously affects the fairness, integrity or public reputation of judicial proceedings." *Id.* (internal quotation marks, citation, and brackets omitted).

Conditions of supervised release are part of a defendant's sentence and must be pronounced at sentencing unless their imposition is required by 18 U.S.C. § 3583(d). *United States v. Diggles*, 957 F.3d 551, 556-59 (5th Cir. 2020) (en banc); *see also Martinez*, 47 F.4th at 366-67 & n.5. The pronouncement requirement "is part of the defendant's right to be present at sentencing, which in turn is based on the right to mount a defense" and is "satisfied when a district judge enables that defense by giving the defendant notice of the sentence and an opportunity to object." *Diggles*, 957 F.3d at 560. It is satisfied when the defendant is notified at sentencing of the conditions that are being imposed, which it may do by "orally stating the condition or by reference to a list of recommended supervised release conditions from a court-wide or judge-specific standing order, or some other document." *Martinez,* 47 F.4th at 367. Such oral adoption must be when the defendant is in court and can object. *Id.*

"Post-*Diggles*, our jurisprudence has . . . only require[ed] the court [to] make a 'shorthand reference' to standard conditions of supervision found in a court-wide standing order and later imposed in the written judgment." *United States v. Baez-Adriano*, 74 F.4th 292, 298 (5th Cir. 2023) (quoting *United States v. Vargas*, 23 F.4th 526, 528 (5th Cir. 2022)). The district court's "reference to and oral imposition of the court-wide standard conditions . . . is dispositive." *Baez-Adriano*, 74 F.4th at 301.

Here, in imposing the sentence, the district court required Chrisenberry to "comply with the standard conditions recommended by the U.S. Sentencing Commission." Northern District of Texas Miscellaneous Order Number 64 adopts by reference the standard conditions set forth in form AO 245B, and the standard conditions at issue track verbatim the same conditions in Form AO 245B.[1] *See Baez-Adriano*, 74 F.4th at 301; *see also* U.S.S.G. § 5D1.3(c).

Assuming that the challenged conditions were not properly pronounced, the Government argues, the judgment should be affirmed because there was no substantive conflict between the written conditions and those that were pronounced orally. Chrisenberry complains that condition 1 in the written revocation judgment, which requires him to report to the probation office in the federal district where he is "authorized to reside" upon release from prison, is inconsistent with the district court's oral pronouncement and the original 2007 judgment, which required him to report to the probation office in the district to which he is "released." He contends that condition should be struck because the discrepancy is likely to create confusion. We have held that this same discrepancy is not in conflict

[1] https://www.txnd.uscourts.gov/sites/default/files/orders/misc/MisOrder64-1.pdf.; https://www.uscourts.gov/sites/default/files/ao245b.pdf.

because the two phrases describe the same location. *United States v. Williams*, No. 21-10015, 2022 WL 636681, 1 (5th Cir.) (unpublished), *cert. denied*, 143 S. Ct. 159 (2022)). Although *Williams* is unpublished, it suggests that any error in this case cannot be clear or obvious. *See United States v. Guerrero-Robledo*, 565 F.3d 940, 946 (5th Cir. 2009); *see also Puckett*, 556 U.S. at 135.

We hold that the district court made an adequate pronouncement by making a shorthand reference at sentencing to standard conditions adopted by the district court's standing order. *See Baez-Adriano*, 74 F.4th at 301. There was no error, plain or otherwise, because Chrisenberry's right to be present at sentencing was not violated. *See Martinez*, 47 F.4th at 366-67; *see also Diggles*, 957 F.3d at 560. The judgment is AFFIRMED.