UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-1528
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DONALD EUGENE LANGSTON,

Defendant-Appellant.

Appeal from the United States District Court
For the Northern District of Texas
(CR 3 90 244 D)

(February 19, 1993)

Before POLITZ, Chief Judge, DUHÉ and DeMOSS, Circuit Judges.

PER CURIAM:[*]

Donald Eugene Langston pleaded guilty to one count of carrying a firearm while committing a drug-trafficking offense in violation of 18 U.S.C. § 924. The district court imposed the mandatory five-year term of imprisonment and ordered Langston to serve a

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

three-year period of supervised release. Langston moved for reduction of his sentence under Fed.R.Crim.P. 32.1, challenging the imposition of a term of supervised release. The district court denied the motion; Langston timely appealed. We affirm.

Analysis

The issue presented is whether a defendant sentenced under 18 U.S.C. § 924 also may be sentenced to a period of supervised release. To decide this question we must address a conflict between two of our prior decisions. Langston points to the decision in **United States v. Allison**,[1] which held that "no supervised release is allowed under the punishment provisions of 18 U.S.C. § 924." The district court acknowledged **Allison**'s holding but declined to modify Langston's sentence because of an earlier decision in **United States v. Van Nymegan**,[2] and other decisions of this court affirming sentences of supervised release under the same statute.[3]

We find the results of the **Van Nymegan** and **Allison** cases irreconcilable. Under our established circuit policy we are bound

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[1] 953 F.2d 870, 875 (5th Cir.), cert. denied, 112 S.Ct. 2319 (1992).

[2] 910 F.2d 164 (5th Cir. 1990) (per curiam).

[3] **United States v. Gordon**, 901 F.2d 48 (5th Cir.), cert. denied, 111 S.Ct. 510 (1990); **United States v. Randall**, 887 F.2d 1262 (5th Cir. 1989).

to follow the earlier precedent.[4]

The **Van Nymegan** panel considered whether 21 U.S.C. § 846 allowed a term of supervised release even though it, like 18 U.S.C. § 924, did not authorize punishment other than by fine or imprisonment. The panel determined that the discretionary authority to impose a term of supervised release flowed independently from 18 U.S.C. § 3583; as a result, the lack of authorization for a supervised term in 21 U.S.C. § 846 was deemed inconsequential.

The **Allison** panel concluded that the punishment provisions of 18 U.S.C. § 924 did not allow the imposition of a term of supervised release. There is no reference to either 18 U.S.C. § 3583 or **Van Nymegan**.

Without benefit of citation to any supporting authority, Langston suggests that Congress affirmatively intended to exempt persons convicted under 18 U.S.C. § 924 from operation of 18 U.S.C. § 3583. As our Ninth Circuit colleagues have noted, that proposition is unsupported in the statute.[5] The statute is silent

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[4] **In re Dyke**, 943 F.2d 1435, 1442 (5th Cir. 1991) ("In this circuit, one panel may not overrule the decision -- right or wrong -- of a prior panel, absent *en banc* reconsideration or a superseding contrary decision of the Supreme Court.").

[5] **United States v. Robertson**, 901 F.2d 733 (9th Cir.), cert. denied, 111 S.Ct. 395 (1990). 18 U.S.C. § 924 provides in pertinent part:

> Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection. . . . No person sentenced under this subsection shall be eligible for parole during the term

with respect to the imposition of additional penalties and, contrary to Langston's argument, this silence accommodates other sources of punishment authority. As **Van Nymegan** concludes, 21 U.S.C. § 3583 authorizes the imposition of a term of supervised release in any prosecution to which it applies.[6]

Langston finally argues that "at a minimum there is an ambiguity created by the phrasing of 18 U.S.C. § 924(c)(1) and the applicability of 18 U.S.C. § 3583(a)." He relies on the rule of lenity and, as did Van Nymegan, cites **Bifulco v. United States**.[7] Application of the rule of lenity is premised in the first instance on an ambiguity in the statute. There is nothing in the statute, however, expressing or implying that Congress intended to prohibit additional punishment.[8]

The **Van Nymegan** court noted that **Bifulco** dealt with the imposition of a special parole term. The **Bifulco** Court did not consider supervised release[9] or, as a result, the application of

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of imprisonment imposed herein.

It is patently obvious that Congress sought to ensure that anyone convicted under this section would serve the entire term. The section is silent with respect to any additional penalty.

[6] **United States v. Butler**, 895 F.2d 1016 (5th Cir. 1989), cert. denied, 111 S.Ct. 82 (1990).

[7] 447 U.S. 381 (1980).

[8] **Robertson**.

[9] Supervised release is not synonymous with parole, it is cumulative to any prison term and thus expands the maximum

18 U.S.C. § 3583(a) thereto. **Van Nymegan** is our controlling precedent.

AFFIRMED.

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sentence. **Van Nymegan**; **United States v. Sancelmente-Bejarano**, 861 F.2d 206 (9th Cir. 1988).