

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 92-3656  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

PRESTON ODELL LEWIS, JR.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Middle District of Louisiana  
(CR 88 32 A M1)

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May 25, 1993

Before JOLLY, DUHÉ and BARKSDALE, Circuit Judges.

PER CURIAM:<sup>1</sup>

Appellant contests the revocation of his supervised release and the severity of the sentence imposed following revocation. We find no error and affirm.

Lewis was sentenced to eight months of imprisonment, three years of supervised release, and ordered to make restitution. Several years later, Appellant was convicted in Florida. Following a revocation hearing, the court determined that Appellant had violated the terms of his supervised release by having been

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<sup>1</sup> 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

convicted of a drug offense and by leaving the judicial district without permission. The court revoked the previously imposed supervised release, sentenced Appellant to serve concurrent sentences of eighteen months on each count and ordered him to make the restitution originally ordered.

Lewis first contends that the court was guilty of a procedural due process violation because it failed to make written factual findings when it revoked his supervised release as required by Morrissey v. Brewer, 408 U.S. 471 (1972). Indeed the district court did not make written findings, and the oral findings presumably recited at the hearing are not part of the record because they have apparently never been transcribed and filed. The Government, relying on United States v. Yancey, 827 F.2d 83 (7th Cir. 1987), cert. denied, 485 U.S. 967 (1988), argues that the court's oral findings as transcribed satisfy the procedural process due. We need not reach this issue, however, because, as noted below, the failure to write findings did not affect Appellant's substantial rights, therefore, any error was harmless. See Kotteakos v. United States, 328 U.S. 750 (1946).

Appellant next complains that the court lacked a factual basis for revocation because the appeal of his Florida state conviction is pending. A district court may revoke a term of supervised release if it finds by a preponderance of the evidence that a condition of supervised release has been violated. 18 U.S.C. § 3583(e)(3). The record makes clear that Lewis left the Southern District of Mississippi in violation of condition number 2 of his

release because the record shows that he was arrested in Florida and neither the court nor probation department had authorized his travel. Additionally, the record shows that he violated condition number 1 of his supervised release which provides that he shall not commit another crime. The Government established that he entered a plea of no contest to another drug offense. As a result, the district court clearly did not err when it revoked his supervised release.

Appellant's final contention is that the sentence imposed following revocation was excessive. We review to determine if the sentence was imposed in violation of the law, resulted from an incorrect application of the guidelines, was outside the guideline range and is unreasonable, or was imposed for an offense for which there is no applicable guideline and is plainly unreasonable. United States v. Headrick, 963 F.2d 777, 779 (5th Cir. 1992).

There are no guidelines applicable to sentencing after revocation of supervised release, but we have held that the Guidelines policy statements regarding this matter are advisory although not mandatory. Id. at 781-82. 18 U.S.C. § 3583(g) requires a district court to revoke a defendant's supervised release upon a finding that the defendant possessed a controlled substance. Id. at 779. Additionally, the district court must sentence the defendant to "not less than one-third of the term of supervised release." 18 U.S.C. § 3583(g). Since the district court found, and the record fully establishes, that Appellant violated his release terms by being convicted of a drug offense it

was required to sentence him to at least twelve months of imprisonment, one-third of his three year term of supervised release. The sentence was, therefore, not a violation of law. When we examine the range of imprisonment set forth in the Guidelines and revocation table which considers the grade of the violation and the defendant's criminal history category at the time he was originally sentenced, we find that they suggest an imprisonment range of 12 to 18 months. Appellant was sentenced within this range so his sentence is plainly not unreasonable.

AFFIRMED.