

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-9095
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

NICKY EDWARD GREEN,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(4:92 CR 170 Y)

July 2, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:¹

I.

Nicky Edward Green pleaded guilty to conspiracy to possess with intent to distribute more than 500 grams of cocaine. Green was sentenced below the guideline range to a term of imprisonment of 36 months and a term of supervised release of three years. After completing the term of imprisonment and while on supervised

¹Local 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

release, Green violated standard conditions numbers three and eight. Specifically, Green failed to report to his probation officer on two occasions and admitted to illegal use of cocaine on two occasions and tested positive for cocaine metabolite. Green also failed to report as scheduled to the local contract drug center to produce a urine specimen on four occasions in violation of special condition number two. The Government filed a motion to revoke supervised release. At the hearing on the motion, Green admitted that he had failed to report to the probation officer and to the contract drug center as ordered and to abusing cocaine while on supervised release. The district court revoked the term of supervised release and sentenced Green to a term of imprisonment of two years.

II.

A.

Green contends that revocation of his term of supervised release is contrary to the legislative intent underlying the Sentencing Reform Act of 1984. As originally enacted, the Act permitted courts to deal with violations of conditions of a term of supervised release under the contempt of court provisions of 18 U.S.C. § 401(3). **See** 18 U.S.C.A. § 3583(e)(3) (West 1985). However § 3583(e)(3) has since been amended to permit a sentencing court to:

revoke a term of supervised release, and require the person to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision, if it finds by a preponderance of the evidence that the person violated a condition of supervised release. . . .

18 U.S.C. § 3583(e)(3).

Moreover, under § 3583(g), the sentencing court is **required** to "terminate the term of supervised release and require the defendant to serve in prison not less than one-third of the term of supervised release" when it finds that the defendant was in possession of a controlled substance while on supervised release. 18 U.S.C. § 3583(g); **see United States v. Headrick**, 963 F.2d 777, 779 (5th Cir. 1992). Since Green admitted to cocaine use while on supervised release, the district court was required to sentence Green to serve at least one additional year in prison. **See United States v. Courtney**, 979 F.2d 45, 49 (5th Cir. 1992) (finding of knowing and voluntary ingestion is tantamount to a finding of possession), **accord United States v. Smith**, 978 F.2d 181, 182 (5th Cir. 1992).

B.

Green contends that the sentence imposed by the district court was unreasonable. Green contends that most of his failure-to-report violations were due to circumstances which were not entirely his fault. He argues that he has demonstrated an ability to remain gainfully employed and that the best way to help him overcome his drug problem is to allow him to remain with his family and to pursue drug treatment outside of prison.

This Court will uphold a sentence imposed after revocation of a term of supervised release unless the sentence was imposed in violation of law or is plainly unreasonable. **Headrick**, 963 F.2d at

779. As was previously discussed, the statutory sentencing range was one to three years. 18 U.S.C. § 3583(e) and (g).

District courts are directed to consider the factors listed in § 3553(a) when imposing sentences under § 3583(e). 18 U.S.C. § 3583(e). The district court's reasons for imposing the two-year sentence parallel most of the factors listed in § 3553(a). The district court stated that the sentence was intended to serve as punishment and deterrence. It was intended to "reflect the seriousness of the offense to afford an adequate deterrence to criminal conduct and to protect the public from further crimes of the defendant." The district court noted that Green had originally been given a lenient sentence which was substantially below the guideline range and stated that it was imposing a sentence above the minimum required by the statute to convey to Green that drug-abuse will not be tolerated and that the time had come for him to overcome his drug problem. It was not plainly unreasonable for the district court to sentence Green to two years of imprisonment for the reasons it listed.

III.

For the reasons states above, we affirm the district court's revocation of Green's term of supervised release. In addition, we affirm the sentence imposed by the district court.

AFFIRMED.