

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 93-1244  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

DEBORAH S. HILL,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
(4:91 CR 042 A)

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September 7, 1993

Before REAVLEY, DUHÉ and BARKSDALE, Circuit Judges.

PER CURIAM:<sup>1</sup>

This is an appeal from a revocation of probation. Deborah Hill (Hill) was sentenced to a term of incarceration and supervised release after she was found to have violated the conditions of her probation. We affirm.

I.

Hill pleaded guilty to embezzlement, 18 U.S.C. § 656. The presentence report indicated a guideline range of 8 to 14 months imprisonment, but in lieu of incarceration the district court

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

sentenced Hill to five years of probation. The following conditions were imposed: (1) a residential drug treatment program; (2) periodic testing for controlled substances; and, (3) participation in a mental health treatment program.

In March 1993, Hill's probation officer petitioned for revocation. After an evidentiary hearing, the district court found that Appellant had possessed a controlled substance.<sup>2</sup> Pursuant to 18 U.S.C. § 3565(a), the court revoked probation and sentenced Hill to twenty months imprisonment, to be followed by two years of supervised release. Hill now argues that the district court erred in its interpretation of § 3565, and that it was error to impose a period of supervised release following incarceration.

## II.

Section 3565(a) states, in pertinent part:

Notwithstanding any other provision of this section, if a defendant is found by the court to be in possession of a controlled substance, thereby violating the condition imposed by section 3563(a)(3) [conditions on probation], the court shall revoke the sentence of probation and sentence the defendant to not less than one-third of the original sentence.

Hill complains that the court erred in interpreting the phrase "original sentence." She contends that her original sentence is the one which could have been imposed under the guidelines, rather than the sentence she actually received. The district court disagreed; it looked to the five year (sixty months) sentence of probation and imposed twenty months of incarceration (one-third of the sixty month probation period).

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<sup>2</sup> Hill does not contest this finding.

Hill's argument is foreclosed by this court's recent decision in United States v. Sosa, -- F.2d --, No. 92-9022, 1993 WL 287755 (5th Cir. August 3, 1993), where we held:

[A] defendant who violates his parole by using drugs shall be sentenced to one third of his "original sentence." "Original" refers to the sentence he received for his original offense. "Sentence" could refer to either probation or incarceration, as both are types of sentences within the meaning of the statute. The new sentence must be one of incarceration and not probation, however, because [§ 3565(a)] also states that "the court shall revoke the sentence of probation," language clearly demonstrating that imposition of additional probation is not Congress's intent.

Id. at \*3; accord United States v. Shampang, 987 F.2d 1439 (9th Cir. 1993); United States v. Byrkett, 961 F.2d 1399 (8th Cir. 1992); United States v. Harrison, 815 F.Supp. 494 (D.D.C. 1993). But see United States v. Roberson, 991 F.2d 627 (10th Cir. 1993); United States v. Clay, 982 F.2d 959 (6th Cir. 1993); United States v. Granderson, 969 F.2d 980 (11th Cir. 1992), cert. denied, 113 S.Ct. 3059 (1993); United States v. Gordon, 961 F.2d 426 (3rd Cir. 1992).

### III.

Appellant next argues that the district court erred as a matter of law in imposing a period of supervised release in addition to the sentence of incarceration. When a defendant violates a condition of probation, and the district court concludes that incarceration is warranted, 18 U.S.C. § 3656(a)(2) directs the court to "revoke the sentence of probation and impose any other sentence that was available under subchapter A at the time of the initial sentencing." Hill contends that supervised release is not

provided for under subchapter A, 18 U.S.C. §§ 3551-3559; therefore, supervised release is not a sentencing option. This argument fails for two reasons.

First, at the time of her initial sentencing, Hill was susceptible to a term of supervised release pursuant to subchapter A of the sentencing guidelines. See R vol. I, at 28 (presentence report).

Next, U.S.S.G. § 7B1.3(g)(1) states: "Where probation is revoked and a term of imprisonment is imposed, the provisions of §§ 5D1.1-1.3 shall apply to the imposition of a term of supervised release." Section 5D1.1(a) states: "The court shall order a term of supervised release to follow imprisonment when a sentence of imprisonment of more than one year is imposed...." The district court correctly followed the guidelines; there is no error its decision to impose a term of supervised release following incarceration. See United States v. Hobbs, 981 F.2d 1198, 1199 (11th Cir. 1993); United States v. Harrison, 815 F.Supp. 494, 500 (D.D.C. 1993).

Appellant's sentence is, therefore, AFFIRMED.