

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-8856

(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES C. CRAIG,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(A-93-CR-47)

(June 27, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

James Craig appeals the district court's sentence imposed upon revocation of sentence. Finding the sentence neither imposed in violation of law nor plainly unreasonable, we affirm.

Craig was convicted, pursuant to his guilty plea, of three counts of bank robbery in violation of 18 U.S.C. § 2113(a). He was sentenced to fifty-seven months imprisonment and five years of supervised release. In addition to complying with the standard

* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

conditions of supervised release,¹ Craig had to participate in a program approved by the United States Probation Office for substance abuse treatment.

Craig's probation officer subsequently filed a motion to revoke supervised release. The motion specifically charged Craig with (1) failing to report to his probation officer as directed; (2) failing to notify his probation officer of his change in employment within seventy-two hours; and (3) failing to report for substance abuse treatment. At his revocation hearing, Craig pled true to the charges. The district court therefore granted the motion to revoke based on its finding that Craig violated the terms and conditions of his supervised release.

In determining an appropriate term of imprisonment,² the district court expressly considered the policy statements of Chapter 7 of the Guidelines.³ Based on the revocation table set forth in U.S.S.G. § 7B1.4(a), p.s., Craig's applicable sentencing range was six to twelve months imprisonment. Based on its conclusion that the policy statements of Chapter 7 were advisory

¹ Those standard conditions required, *inter alia*, that Craig report to his probation officer as directed by the district court and submit a written report within the first five days of each month, and that he notify his probation officer within seventy-two hours of any change in residence or employment.

² A court may require a person who has violated a condition of his supervised release "to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision." 18 U.S.C. § 3583(e)(3).

³ See United States Sentencing Commission, *Guidelines Manual*, Chapter 7 (Nov. 1993) (entitled "Violations of Probation and Supervised Release").

only, the district court chose not to apply the policy statements and sentenced Craig to thirty-three months imprisonment, three months below the statutory maximum. The court entered a final order reflecting its decision from which Craig filed a timely notice of appeal.

"We will uphold a sentence unless it (1) was imposed in violation of law, (2) resulted from an incorrect application of the guidelines, (3) was outside the guideline range and is unreasonable, or (4) was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable." *United States v. Headrick*, 963 F.2d 777, 779 (5th Cir. 1992) (citing 18 U.S.C. § 3742(e)). Because there are no applicable guidelines for sentencing after revocation of supervised release, see U.S.S.G. Chapter 7 Part A 1. ("At this time, the Commission has chosen to promulgate policy statements only."), we will uphold Mathena's sentence unless it is in violation of law or is plainly unreasonable. *Headrick*, 963 F.2d at 779. In making those determinations, we review the district court's interpretation of statutes de novo. *Id.*

Craig first contends that his sentence was imposed in violation of law because the district court erroneously concluded that the policy statements of Chapter 7 merely advise, rather than bind, a court when imposing a revocation sentence under § 3583(e). Craig's argument is foreclosed by our recent decision in *United States v. Mathena*, No. 93-8054, 1994 WL 242501 (5th Cir. June 6, 1994), where we held "that when a court sentences a defendant upon

revoking his supervised release under § 3583(e), the policy statements of Chapter 7 are advisory only." *Id.* 1994 WL 242501, at *5. We further observed in *Mathena* that a sentence which diverges from advisory policy statements is not a departure such that a court has to provide notice or make specific findings normally associated with departures under § 3553(b). See *id.* 1994 WL 242501, at *6 n.13. Consequently, we also reject Craig's argument that the district court failed to articulate adequate reasons for its "departure" under § 3553(b).

Craig also contends that his sentence of thirty-three months imprisonment was plainly unreasonable. Given the seriousness of Craig's original conviction of three counts of bank robbery, the frequency in which he violated his terms of supervised release, that the revocation sentence was less than his initial sentence, and that the revocation sentence fell below the statutory maximum of thirty-six months, we cannot conclude that Craig's sentence was plainly unreasonable. See *Mathena*, 1994 WL 242501, at *6; *Headrick*, 963 F.2d at 782-83.

Accordingly, we AFFIRM the sentence imposed by the district court.