

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 18-11291  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

June 26, 2019

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CHASE MATHENY,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:18-CR-72-1

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Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:\*

Chase Matheny pleaded guilty to possession of stolen mail, and he received a sentence of 30 months in prison and a term of supervised release. On appeal, he challenges a condition of supervised release that requires him to “permit a probation officer to visit [him] at any time at home or elsewhere and permit confiscation of any contraband observed in plain view.” According

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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to Matheny, this visitation condition is unreasonable and unconstitutionally overbroad.

The Government moves for summary affirmance on the ground that our recent decision in *United States v. Cabello*, 916 F.3d 543, 544 (5th Cir. 2019), forecloses Matheny's challenge to the visitation condition. Matheny concedes that his sole appellate argument is foreclosed by *Cabello*, but he seeks to preserve the issue for further review.

In *Cabello*, this court found no plain error in the imposition of the visitation condition. *Cabello*, 916 F.3d at 544. As Matheny concedes, review in this case is also for plain error because he did not object to the condition. *See United States v. Jones*, 484 F.3d 783, 792 (5th Cir. 2007). *Cabello* is directly on point and dictates that the judgment against Matheny be affirmed. Accordingly, the Government's motion for summary affirmance is GRANTED, and the judgment is AFFIRMED. The Government's alternative motion for an extension of time for briefing is DENIED.

Although neither party has noted the error, the written judgment indicates that Matheny received a three-year term of supervised release, but the oral pronouncement of sentence reflects a two-year term of release. Where there is a conflict between the oral pronouncement of a sentence and the written judgment, the oral pronouncement prevails. *United States v. Torres-Aguilar*, 352 F.3d 934, 935 (5th Cir. 2003). Therefore, the case is REMANDED for the limited purpose of correcting the clerical error in the judgment. *See* FED. R. CRIM. P. 36; *United States v. Johnson*, 588 F.2d 961, 964 (5th Cir. 1979).