

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

No. 18-11396
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

September 9, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

IVAN VALDESPINO,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:17-CR-114-1

Before STEWART, Chief Judge, and HIGGINSON and COSTA, Circuit Judges.

PER CURIAM:*

Ivan Valdespino pleaded guilty to attempting to obtain contraband while incarcerated for separate drug and firearms offenses. He was sentenced to nine months of imprisonment and three years of supervised release. The term of supervised release was ordered to run concurrently with the term of supervised release in the drug and firearms case.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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The district court revoked his supervised release in both cases due to his violations of various conditions and sentenced him to serve 30 months of imprisonment concurrently with a sentence of 37 months in the drug and firearms case. He appeals the 30-month sentence, arguing that it exceeds the statutory maximum sentence.

A sentence that exceeds the statutory maximum is an illegal sentence. *United States v. Vera*, 542 F.3d 457, 459 (5th Cir. 2008). Despite the lack of any objection in the district court, our review is de novo. *United States v. Oswalt*, 771 F.3d 849, 850 (5th Cir. 2014); *Vera*, 542 F.3d at 459.

As the Government concedes, the 30-month sentence imposed exceeds the 24-month statutory maximum sentence that may be imposed upon revocation of supervised release in the contraband case, *see* 18 U.S.C. § 1791(b)(3); 18 U.S.C. § 3583(e)(3), and it must be corrected. *See United States v. Vera*, 542 F.3d 457, 459 (5th Cir. 2008). Accordingly, we VACATE the sentence and REMAND for resentencing.