

United States Court of Appeals for the Fifth Circuit

No. 24-10471
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 24, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOHNNER JOE WARD, JR.,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:22-CR-47-1

Before SMITH, STEWART, and DUNCAN, *Circuit Judges*.

PER CURIAM:*

Johnner Ward, Jr., appeals the judgment revoking his term of supervised release (“SR”) and sentencing him to seven months in prison and two years of SR. For the first time on appeal, Ward contests the constitutionality of 18 U.S.C. § 3583(g), which mandates revocation of SR and a term of imprisonment for any offender who violates specified conditions of SR, including, *inter alia*, refusal to comply with drug testing and possession of a

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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controlled substance.

Relying on *United States v. Haymond*, 588 U.S. 634 (2019), Ward maintains that § 3583(g) is unconstitutional because it requires revocation of SR and a term of imprisonment without affording the right to a jury trial and requiring proof beyond a reasonable doubt. Ward acknowledges, however, that his challenge is foreclosed by *United States v. Garner*, 969 F.3d 550 (5th Cir. 2020); he merely asserts the issue to preserve it for further review. The government has filed an unopposed motion for summary affirmance or, in the alternative, for an extension of time to file its brief.

In *Garner*, 969 F.3d at 551–53, we rejected the argument that Ward has raised and held that § 3583(g) is not unconstitutional under *Haymond*. Accordingly, Ward’s sole argument on appeal is foreclosed. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Thus, the government’s motion for summary affirmance is GRANTED, its alternative motion for an extension is DENIED, and the judgment is AFFIRMED.