

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10061
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VICKI LYNN THOMPSON ROBERTSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(4:93-CR-13-1)

(May 23, 1994)

Before POLITZ, Chief Judge, HIGGINBOTHAM and DeMOSS, Circuit Judges.

PER CURIAM:*

Vicki Lynn Robertson appeals the prison sentence she received upon revocation of probation in light of a subsequent Supreme Court decision interpreting the relevant statute, 18 U.S.C. § 3565(a). We vacate and remand for sentencing.

In December 1989, Robertson pled guilty to using a telephone

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

to facilitate a conspiracy to manufacture and distribute amphetamines. Her offense level and criminal history resulted in a Guideline imprisonment range of 6 to 12 months. She was also eligible for probation for a period of one to five years. She was sentenced to a five-year term of probation. In January 1994 the government moved to revoke her probation based on several violations of its conditions, including possession of narcotics. The district court invoked the mandatory revocation provision of 18 U.S.C. § 3565(a)¹ and sentenced Robertson to 20 months imprisonment, a term one-third the length of her original sentence of probation.²

On expedited appeal Robertson urges that her 20-month prison sentence is inconsistent with the holding of the recent Supreme Court decision in **Granderson**³ which interprets the statutory phrase

¹"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), the court shall revoke the sentence of probation and sentence the defendant to not less than one-third of the original sentence." 18 U.S.C. § 3565(a).

²At the time of sentencing the district court's 20-month sentence reflected the law of this circuit. **United States v. Sosa**, 997 F.2d 1130 (5th Cir. 1993) (holding that mandatory resentencing to one-third of probation violator's original sentence referred to original sentence of probation, not original Guideline range). **Sosa** was overruled by **United States v. Granderson**, 127 L.Ed.2d 611 (1994).

³The facts of **Granderson** are remarkably similar to those of the instant case. Granderson, facing a zero to six-month prison sentence under the Guidelines, was sentenced to five years probation. During his probation, however, Granderson tested positive for cocaine, resulting in revocation of his probation. The district court, reading the section 3565(a) provision to require a prison sentence of one-third the length of his "original sentence" of probation sentenced Granderson to 20 months in prison.

"original sentence" to mean the maximum under the original Guideline range rather than the original sentence of probation. The government concedes that Robertson's 20-month sentence must be vacated and the matter remanded to the district court for resentencing in light of the teachings in **Granderson**.⁴

VACATED and REMANDED.

The Supreme Court affirmed the Eleventh Circuit's decision overruling that sentence, holding that the term "original sentence" refers to the maximum sentence of imprisonment available for the offense of conviction under the Guidelines -- six months in Granderson's case, 10 months in the instant case.

⁴Robertson also challenges the district court's decision sentencing her to an additional one-year term of probation to follow the 20-month prison sentence. Robertson's entire sentence must be vacated and remanded in light of **Granderson**. We do not address that issue at this time.