

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-50549
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

RANDALL C. STONE,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(M-92-CR-81)

(May 24, 1995)

Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:¹

Randall C. Stone (Appellant) appeals from district court's revocation of his term of supervised release. We affirm.

I. BACKGROUND

Appellant plead guilty to one count of felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1), and was sentenced to fifteen months imprisonment and three years supervised release. Prior to release from incarceration, Appellant requested that his

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

supervised release be managed by the United States Probation Office in Lafayette, Louisiana. The request was denied.

Appellant was released from FCI Fort Worth on Friday, July 1, 1994, with instructions to report to the probation office in Midland, Texas within 72 hours of release. Because Monday, July 4th was a holiday, he was instructed to report by Tuesday, July 5th. Instead of reporting as instructed, Appellant contacted the probation office in Midland, by telephone, from the probation office in Lafayette. Appellant was instructed to report to the Midland office by July 6th. Appellant refused, alleging that his life would be in danger if he returned to Midland.

The probation officer in Midland informed Appellant that his allegation had been investigated, and could not be verified. In addition, the officer admonished Appellant that if he failed to report to Midland by July 6th an arrest warrant would be requested. On July 6th, Appellant returned to the Lafayette probation office, an arrest warrant was issued and Appellant was arrested.

The district court held a hearing on Appellant's violation of the terms of his supervised release for failure to timely report to the Midland probation office, and failure to obey the instructions of his probation officer. The district court revoked the conditions of Appellant's supervised release, and sentenced Appellant to ten months of imprisonment. On appeal, Appellant contends that the district court committed reversible error by accepting hearsay testimony at his revocation hearing. Appellant

requests that we vacate his sentence and remand this matter to the district court for a new revocation hearing.

II. ANALYSIS

Appellant does not contest that he violated the terms of his supervised release. He contends, however, that the district court improperly accepted hearsay testimony on an issue crucial to his defense. As his defense for failure to report as directed, Appellant asserted that he could not report to the Midland probation office for fear of retribution for his cooperation with a government investigation of certain persons in Midland. The district court allowed Appellant's probation officer to testify, over Appellant's objection, that he had been informed by an ATF agent that Appellant had never cooperated in the investigation of other federal defendants.

"At a revocation proceeding, the government has the burden of proving, by a preponderance of the evidence, that the releasee committed the charged violation." United States v. Alaniz-Alaniz, 38 F.3d 788, 792 (5th Cir. 1994), cert. denied, 115 S.Ct. 1412 (1995). "Where there is an adequate basis for the district court's discretionary action of revoking probation, the reviewing court need not decide a claim of error as to other grounds that had been advanced as a cause for revocation." United States v. Turner, 741 F.2d 696, 698 (5th Cir. 1984).

Stone admitted his failure to report as directed on July 5th and 6th, thus, we need look no further. However, even assuming that the district court committed error by accepting the hearsay

testimony of the probation officer, such error was harmless. In the first instance, the hearsay testimony related to his excuse for not reporting, and did not directly relate to his violation of the conditions of supervised release. Second, prior to release, Appellant requested supervision by the Lafayette probation office, but his request was denied. His allegation that he would be in danger if he returned to Midland was investigated and determined to be unfounded. The hearsay testimony of the probation officer in no way affected the finding of the district court that Appellant deliberately violated the conditions of his release, and was therefore harmless.

III. CONCLUSION

Appellant has failed to show that the district court abused its discretion by finding that he violated the conditions of his supervised release. The district court had an adequate independent basis for its conclusion, and therefore we need not consider whether the court erred by admitting the hearsay testimony. However, even if we were to find that the testimony was improperly admitted, such error was harmless. The judgment of the district court is AFFIRMED.