

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 16, 2021

Lyle W. Cayce
Clerk

No. 20-10755
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BRANDON DEMON BLACKMON,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CR-258-1

Before HIGGINBOTHAM, JONES, and COSTA, *Circuit Judges.*

PER CURIAM:*

Brandon Demon Blackmon pleaded guilty to two counts of possession of a firearm by a convicted felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The district court sentenced him to 46 months of imprisonment, applying a sentencing enhancement on the ground that Blackmon's prior

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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conviction under the Texas aggravated assault statute constituted a crime of violence as defined by U.S.S.G. § 4B1.2. On appeal, Blackmon contends that the district court erred by including a special condition of supervised release in its written judgment that he attend “inpatient *and/or* outpatient” substance abuse treatment that conflicts with the oral pronouncement at his sentencing that he attend “*either* inpatient or outpatient” substance abuse treatment. Blackmon also contends that the district court erred in applying the sentencing enhancement, arguing that Texas aggravated assault does not constitute a crime of violence. Blackmon correctly concedes that the latter argument is foreclosed by our binding precedent in *United States v. Guillen-Alvarez*, 489 F.3d 197, 200-01 (5th Cir. 2007). See *United States v. Setser*, 607 F.3d 128, 131 (5th Cir. 2010).

When oral pronouncement is required, “[t]he key determination is whether [any] discrepancy between the oral pronouncement and the written judgment is a conflict or merely an ambiguity that can be resolved by reviewing the rest of the record.” *United States v. Mireles*, 471 F.3d 551, 558 (5th Cir. 2006). A conflict occurs “[i]f the written judgment broadens the restrictions or requirements of supervised release from an oral pronouncement,” *id.*, or imposes more burdensome conditions, see *United States v. Bigelow*, 462 F.3d 378, 383 (5th Cir. 2006).

Here, the written judgment did not necessarily create a conflict with the oral pronouncement. At the sentencing hearing, the district court informed Blackmon that he was to “participate in a program, either inpatient or outpatient, . . . for treatment,” while the court’s written judgment provided for “inpatient and/or outpatient treatment.” Although the latter could be interpreted as broadening the conditions of supervision, we read it as merely creating an ambiguity, as Blackmon could not feasibly participate in both types treatment programs at once. Together, we read the district

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court's pronouncement and its judgment to say that Blackmon may have to participate in inpatient treatment and then, later, in outpatient treatment.

Accordingly, Blackmon's sentence is AFFIRMED.