

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 2, 2021

Lyle W. Cayce
Clerk

No. 20-50656
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ORLANDO BARR,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:13-CR-179-1

Before WIENER, SOUTHWICK, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

Defendant-Appellant Orlando Barr pleaded guilty to possession with intent to distribute five grams or more of methamphetamine, 21 U.S.C. § 841(a)(1), (b)(1)(B). He was sentenced to 77 months in prison and five years of supervised release. In 2018, the district court revoked his supervised

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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release and sentenced him to 12 months in prison and five years of supervised release. Following a revocation hearing in 2020, Barr's supervised release was again revoked based on the violation of the condition not to commit another federal, state, or local crime—namely, possession of marijuana, possession of controlled substances, and driving while intoxicated. The district court sentenced him to 36 months of imprisonment with no supervised release.

Barr argues that the evidence was insufficient to show that he possessed any illegal drugs at the time of the traffic stop or had committed a criminal offense based on that possession because no testing had been performed on the alleged substances. The Government counters that Barr's argument does not address the arrest for driving while intoxicated. We review a district court's decision to revoke supervised release for abuse of discretion. *United States v. Spraglin*, 418 F.3d 479, 480 (5th Cir. 2005).

A district court may find that a defendant has violated his probation by committing another federal, state, or local offense without the defendant first being prosecuted or convicted of that offense. U.S.S.G. § 7B1.1, comment. (n.1). The reasonable doubt standard applicable in criminal cases does not govern the revocation of supervised release; rather, the district court may revoke a defendant's supervised release if it finds by a preponderance of the evidence that the defendant violated a condition of supervised release. *United States v. Teran*, 98 F.3d 831, 836 (5th Cir. 1996).

The preponderance of the evidence adduced at Barr's revocation hearing supports the district court's finding that, more likely than not, Barr had committed another federal, state, or local crime of driving while intoxicated or possessing marijuana. The district court did not abuse its discretion in revoking Barr's supervised release. *See Spraglin*, 418 F.3d at 480.

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AFFIRMED.