

United States Court of Appeals for the Fifth Circuit

No. 25-10547
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

September 16, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MICHAEL WAYNE LIVESAY,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:15-CR-100-1

Before JONES, DUNCAN, and DOUGLAS, *Circuit Judges*.

PER CURIAM:*

Michael Wayne Livesay was sentenced to 11 months of imprisonment upon the revocation of his term of supervised release. For the first time on appeal, he contests the constitutionality of 18 U.S.C. § 3583(g), which mandates revocation of supervised release and imposition of a term of imprisonment for any offender who violates particular conditions of

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

No. 25-10547

supervised release, including, inter alia, possession of a controlled substance, refusal to refrain from unlawful use of controlled substances, and refusal to comply with drug testing.

Relying on *United States v. Haymond*, 588 U.S. 634 (2019), Livesay maintains that § 3583(g) is unconstitutional because it requires revocation of a term of supervised release and imposition of a term of imprisonment without affording the defendant the constitutionally guaranteed right to a jury trial or requiring proof beyond a reasonable doubt. However, he acknowledges that his challenge is foreclosed by *United States v. Garner*, 969 F.3d 550 (5th Cir. 2020), and 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*, we rejected the argument that Livesay has asserted and held that § 3583(g) is not unconstitutional under *Haymond*. See *Garner*, 969 F.3d at 551-53. Thus, Livesay's sole argument on appeal is foreclosed, and summary affirmance is proper. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, the Government's motion for summary affirmance is GRANTED, its alternative motion for an extension of time to file a brief is DENIED, and the district court's judgment is AFFIRMED.