

United States Court of Appeals
for the Fifth Circuit

No. 25-11225
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 6, 2026

Thomas B. Plunkett, III
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DEANDRE RASHAUN HULBERT,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:24-CR-274-1

Before WILLETT, DUNCAN, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:*

Deandre Rashaun Hulbert challenges the sentence imposed following the revocation of his supervised release. He asserts that the district court erred by (1) concluding that his Texas Penal Code § 22.01(b)(2)(B) assault offense constituted a Grade A supervised-release violation under U.S.S.G.

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

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§ 7B1.1(a)(1), and (2) relying on the retributive sentencing factor set forth in 18 U.S.C. § 3553(a)(2)(A).

As Hulbert concedes, review is for plain error because he did not object to these alleged errors in the district court. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). Hulbert therefore must establish a clear or obvious legal error that affected his substantial rights. *Id.* If he makes that showing, we may exercise our discretion to correct the error, but only if it “seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.” *Id.* (quoting *United States v. Olano*, 507 U.S. 725, 736 (1993)).

The district court did not plainly err in classifying Hulbert’s conduct as a Grade A supervised-release violation. Hulbert contends that his assault offense was not a Grade A violation because it was not a “crime of violence” under the categorical approach we applied in *United States v. Greer*, 20 F.4th 1071, 1074–75 (5th Cir. 2021). There is a circuit split over whether the categorical approach applies to § 7B1.1(a)(1), and we have not yet weighed in. *See United States v. Patel*, No. 22-10021, 2022 WL 17246941, at *1 n.1 (5th Cir. Nov. 28, 2022) (per curiam); *United States v. Perez*, No. 23-11245, 2024 WL 4471502, at *1 (5th Cir. Oct. 11, 2024) (per curiam). Because our law is unsettled and other circuits are divided, it was not clear or obvious error for the district court to consider Hulbert’s actual conduct rather than apply the categorical approach in classifying his supervised-release violation. *See United States v. Salinas*, 480 F.3d 750, 759 (5th Cir. 2007).

Nor is it clear or obvious that the district court relied on § 3553(a)(2)(A) in fashioning his sentence. Hulbert points to the district court’s statement, “I just can’t justify this assault. I mean, I appreciate you relying on the police report, I really do, but it is what it is and it says what it says.” But the district court did not invoke § 3553(a)(2)(A) or expressly refer to any retributive factor. And its focus on the assault can just as easily be

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attributed to its consideration of permissible sentencing factors such as deterrence and incapacitation. *See United States v. Sanchez*, 900 F.3d 678, 685 (5th Cir. 2018). On plain-error review, this ambiguity cuts against Hulbert, who has not shown that the district court “expressly or by unmistakable implication” relied on § 3553(a)(2)(A). *Esteras v. United States*, 606 U.S. 185, 202–03 (2025). In the absence of “*something* in the record to plausibly suggest that the district court based its sentence on the need for retribution (as opposed to deterrence or incapacitation),” Hulbert has not established clear or obvious reliance on an impermissible sentencing factor. *Sanchez*, 900 F.3d at 685.

The district court’s judgment is AFFIRMED.