

United States Court of Appeals
for the Fifth Circuit

No. 25-40343

United States Court of Appeals
Fifth Circuit

FILED

October 8, 2026

Thomas B. Plunkett, III
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BRANDON ROY ALVAREZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:24-CR-252-1

Before CLEMENT, OLDHAM, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Brandon Roy Alvarez pleaded guilty to one count of knowingly enticing and coercing a minor into engaging in sexual activity for which he could be charged with a crime under 18 U.S.C. § 2422(b). He was sentenced to 210 months in prison to be followed by 10 years of supervised release. The accompanying special conditions of supervision set several conditions tailored to Alvarez's offense, including a requirement that he obtain

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

No. 25-40343

permission from his probation officer before possessing or using computers, other electronic communications, data storage devices, or media. Alvarez did not object to these conditions when the sentence was pronounced.

Alvarez timely filed a notice of appeal. Alvarez's counsel moved to withdraw due to a lack of non-frivolous issues on appeal in accordance with *Anders v. California*, 386 U.S. 738 (1967). We ordered counsel to file either a brief on the merits or a supplemental *Anders* brief addressing whether a conflict existed between the oral pronouncement of Alvarez's sentence and the written judgment, particularly with respect to the restriction on possessing or using electronic devices, and the substantive reasonableness of the supervised release conditions. Alvarez's counsel filed a brief on the merits, arguing that (1) the district court improperly delegated its authority by requiring the probation officer's prior approval before using computers or similar electronic devices and (2) this restriction is substantively unreasonable and not tailored to the applicable sentencing factors under 18 U.S.C. § 3583(d). Although Alvarez's brief states that there was no pronouncement issue, the Government asserts that there is a conflict between the written judgment and oral pronouncement of Alvarez's sentence, warranting remand to the district court to correct this error.

We agree with the Government that there is a conflict between the oral and written pronouncements of Alvarez's sentence. As the Government points out, Alvarez's argument that there is no conflict relies on a superseded version of the presentence investigation report ("PSR"). The second amended PSR and final revised PSR state that Alvarez "shall consent to the ongoing monitoring of all electronic devices," but neither require prior approval of the probation officer to possess or use computers and similar devices as Alvarez's written judgment does. When it pronounced Alvarez's sentence, the district court referred to the "computer restrictions [/] monitoring, special condition" listed in the amended PSR appendix, thus

No. 25-40343

adopting a version of the PSR that did not contain the more burdensome electronic devices condition. Because that condition remains present in the written judgment, there is a conflict between the written judgment and oral pronouncement. The Government also correctly concedes that the written condition in the judgment is significantly more burdensome than the condition recommended in the final PSR Appendix and imposed by the district court.

To satisfy due process, “district courts must orally pronounce supervision conditions that are discretionary under 18 U.S.C. § 3583(d), giving the defendant an opportunity to raise any objection prior to imposition of the sentence.” *United States v. Garcia*, 983 F.3d 820, 822 (5th Cir. 2020); *see also United States v. Diggles*, 957 F.3d 551, 556–59 (5th Cir. 2020) (en banc). “Where there is an actual conflict between the district court’s oral pronouncement of sentence and the written judgment, the oral pronouncement controls.” *United States v. Pelayo-Zamarripa*, 81 F.4th 456, 459 (5th Cir. 2023) (citation modified). There is an actual conflict when the written judgment imposes a more burdensome requirement than the oral pronouncement. *Id.* at 460. That is what happened here: Alvarez’s written judgment imposed a more burdensome pre-approval condition than the district court’s oral pronouncement, which referred only to the monitoring of electronic devices described in Alvarez’s up-to-date PSR. *See United States v. Bigelow*, 462 F.3d 378, 383–84 (5th Cir. 2006) (concluding that a similar discrepancy was a conflict). The appropriate remedy is thus remand to the district court to amend the written judgment to conform to the oral sentence. *United States v. Mireles*, 471 F.3d 551, 557–58 (5th Cir. 2006).

Because we conclude that remand for amendment of the judgment is appropriate, we need not decide whether the contested language in the judgment constitutes an improper delegation of authority or renders the sentence substantively unreasonable. *See United States v. Alvarez-Benavidez*,

No. 25-40343

228 F. App'x 468, 469 (5th Cir. 2007) (per curiam) (unpublished) (finding challenge to lack of opportunity to allocute moot where resentencing was required).

We therefore AFFIRM in part, VACATE in part, and REMAND to conform the written judgment to the oral pronouncement at sentencing, consistent with this opinion.

No. 25-40343

ANDREW S. OLDHAM, *Circuit Judge*, concurring in the judgment:

I reiterate my view that our *Diggles* precedents are broken beyond repair. See *United States v. Vacchino*, 174 F.4th 932, 941–42 (5th Cir. 2026) (OLDHAM, J., concurring in the judgment); *United States v. Perez*, No. 23-20067, 2023 WL 7381447, at *1 n.1 (5th Cir. Nov. 7, 2023); *United States v. Griffin*, No. 21-50294, 2022 WL 17175592, at *3 (5th Cir. Nov. 23, 2022) (OLDHAM, J., dissenting). Apparently, a majority of our court thinks this issue is not enbancworthy—either because *Diggles* was correct or because its rule (even if wrong) is not worth fixing.

Both premises are faulty. I’ve already explained in *Vacchino*, *Perez*, *Griffin*, and other cases that *Diggles* was wrong. And we ignore this mistake at our peril. It continues to bedevil the district courts, as this case illustrates. And the *Diggles* rule is so counterintuitive and foreign to all conceptions of law that defense counsel missed it in the district court *and again* in our court. Defense counsel even filed an *Anders* brief and asked to be excused from this case—before our court identified the *Diggles* problem that now warrants relief. And lest you think this much ado about nothing, it bears emphasis that the *Diggles* problem we created in 2020 and then litigated *sua sponte* under *Anders* in this case is a structural error that demands sentencing relief for a pedophile.