

United States Court of Appeals for the Fifth Circuit

No. 23-10545
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 12, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

KYSTON IVORY,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:15-CR-174-1

Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:*

In 2016, Kyston Ivory pleaded guilty to bank robbery and was sentenced to 80 months of imprisonment, followed by a three-year term of supervised release. His term of supervision was revoked, and he was sentenced to 10 months of imprisonment, followed by an additional one-year term of supervised release.

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

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Relying on *United States v. Haymond*, 139 S. Ct. 2369 (2019), Ivory now contends that 18 U.S.C. § 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. He concedes that his challenge is foreclosed by *United States v. Garner*, 969 F.3d 550 (5th Cir. 2020), and raises the issue to preserve it for further review. The Government has filed an unopposed motion for summary affirmance or, alternatively, for an extension of time to file its brief.

In *Garner*, this court rejected the argument that Ivory has advanced and held that § 3583(g) is not unconstitutional under *Haymond*. *See Garner*, 969 F.3d at 551-53. The parties are thus correct that the issue is foreclosed, and the Government is correct that summary affirmance is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, the Government's motion for summary affirmance is GRANTED, the district court's judgment is AFFIRMED, and the Government's alternative motion for an extension of time to file a brief is DENIED.