

United States Court of Appeals for the Fifth Circuit

No. 23-10677
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 12, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOHNNY WAYNE MARSHALL, JR.,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:19-CR-37-1

Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Following his 2020 guilty plea conviction for possession of firearms by a convicted felon, Johnny Wayne Marshall, Jr., was sentenced to 27 months of imprisonment and a two-year term of supervised release. After his supervised release term was revoked in 2021, Marshall received a 10-month prison term and 12 months of supervised release. After this second

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

No. 23-10677

supervised release term was revoked in 2023, Marshall received a 12-month prison term but no further supervised release.

In the instant appeal, Marshall challenges the 2023 revocation. Relying on *United States v. Haymond*, 139 S. Ct. 2369 (2019), Marshall argues that 18 U.S.C. § 3583(g) is unconstitutional because it requires revocation of supervised release and imposition of a prison term based on facts that need not be proved to a jury beyond a reasonable doubt. Marshall concedes that his argument is foreclosed by *United States v. Garner*, 969 F.3d 550, 551-53 (5th Cir. 2020), which held that § 3583(g) is not unconstitutional under *Haymond*. He raises the issue to preserve it for further review. Citing *Garner*, the Government has filed an unopposed motion for summary affirmance or, in the alternative, for an extension of time to file its brief.

The parties are correct that *Garner* forecloses this issue; therefore, 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, its alternative motion for an extension of time is DENIED, and the judgment of the district court is AFFIRMED.