

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 14-14122
Non-Argument Calendar

D.C. Docket No. 1:96-cr-00020-MP-GRJ-2

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL PHILLIP TELEMAQUE,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida

(February 1, 2016)

Before TJOFLAT, MARTIN and ANDERSON, Circuit Judges.

PER CURIAM:

Michael Telemaque appeals the District Court's revocation of his term of supervised release. In 1977, Telemaque having been convicted of conspiracy to possess with intent to distribute cocaine and cocaine base, the District Court sentenced him to a prison term of 180 months to be followed by a term of supervised release of 60 months. In 2013, Telemaque was convicted in the Western District of Louisiana on four counts of failure to depart the United States as required by an order of removal, *see* 8 U.S.S. § 1253(a)(1)(B), and sentenced to prison for 57 months, with a 36 months' term of supervised release. In April 2014, the District Court's probation office petitioned the court to revoke Telemaque's supervised release based on these § 1253(a)(1)(B) convictions. Following a revocation hearing, the court sentenced Telemaque to prison for a term of 27 months, to run consecutively to the 57 months' term. Telemaque appeals the 27 months' sentence.

Telemaque makes two arguments. First, his Western District of Louisiana convictions were not dispositive of whether he violated the terms of his supervised release; indeed, the District Court was permitted to look beyond the mere fact of those convictions in deciding whether to revoke his release. Second, the court abused its discretion in concluding that he violated the terms of his supervised release, for he had a good faith belief that he was not required to obtain the

documents necessary for his removal, which formed the basis of the Western District of Louisiana convictions.¹

We review a district court's revocation of supervised release for an abuse of discretion, *United States v. Frazier*, 26 F.3d 110, 112 (11th Cir. 1994), and its findings of fact for clear error, *United States v. Almand*, 992 F.2d 316, 318 (11th Cir. 1993).

A district court may revoke a term of supervised release if it finds by a preponderance of the evidence that the defendant violated a condition of his supervised release. 18 U.S.C. § 3583(e)(3). Evidence of a conviction is probative to establish the defendant violated a state or federal law and, thereby, violated a condition of his supervised release. *United States v. Hofierka*, 83 F.3d 357, 363 (11th Cir.), *modified on other grounds*, 92 F.3d 1108 (11th Cir. 1996).

A supervised release revocation proceeding is not the proper forum in which to collaterally attack the conviction giving rise to the revocation. *Id.* With the sole exception of a conviction obtained in violation of the right to counsel, a defendant in a federal sentencing proceeding cannot attack the validity of a prior state court

¹ The government contends that Telemaque did not present these arguments to the district court. Arguments raised for the first time on appeal are reviewed for plain error, meaning that the defendant must show that (1) an error occurred, (2) the error was plain, (3) it affected substantial rights, and (4) it seriously affected the fairness of judicial proceedings. *United States v. Gresham*, 325 F.3d 1262, 1265 (11th Cir. 2003). We give Telemaque the benefit of the doubt and review his arguments for error.

conviction that serves as the predicate offense for an enhancement under 18 U.S.C. § 924(e). *Custis v. United States*, 511 U.S. 485, 496–97, 114 S.Ct. 1732, 1738–39, 128 L.Ed.2d 517 (1994). In an immigration removal proceeding, an alien does not have a Sixth Amendment right to counsel, only a privilege. 8 U.S.C. § 1362; *Dakane v. U.S. Att’y Gen.*, 371 F.3d 771, 774 (11th Cir. 2004), *corrected*, 399 F.3d 1269 (11th Cir. 2005).

The district court did not err in revoking Telemaque’s supervised release. The evidence of the prior convictions was proved that he violated federal law and thus violated the terms of his supervised release.

AFFIRMED.