

ON PETITION FOR REHEARING

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4030

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TERRY SHIFFLETT,

Defendant - Appellant.

No. 22-4040

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TERRY LEE SHIFFLETT,

Defendant - Appellant.

Appeals from the United States District Court for the Northern District of West Virginia,
at Martinsburg. Gina M. Groh, District Judge. (3:21-cr-00037-GMG-RWT-1; 3:99-cr-
00042-GMG-RWT-3)

Submitted: October 5, 2022

Decided: December 13, 2022

Before AGEE and DIAZ, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed in part, vacated in part, and remanded by unpublished per curiam opinion.

ON BRIEF: Robert C. Stone, Jr., ROBERT C. STONE, JR., PLLC, Martinsburg, West Virginia, for Appellant. William Ihlenfeld, United States Attorney, Eleanor F. Hurney, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Martinsburg, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Terry Shifflett pled guilty pursuant to a plea agreement to one count of aiding and abetting the unlawful use of a communication facility. He was sentenced to 10 months in prison and one year of supervised release. The same day, the court revoked Shifflett's supervised release and sentenced him to a consecutive term of 24 months' imprisonment. We previously affirmed the district court's judgments.

Shifflett has now filed a petition for rehearing challenging his revocation sentence in case No. 22-4040. He contends that the district court violated the Ex Post Facto Clause by applying a version of 18 U.S.C. § 3583(e)(3) that was enacted after his original offense and sentencing in May 2000, resulting in a cumulative sentence of incarceration upon two revocations of supervised release that exceeded the 60-month statutory maximum applicable in 2000. The Government has filed a response conceding that Shifflett's revocation sentence exceeds the statutory maximum. Accordingly, we grant the petition for rehearing in case No. 22-4040, vacate the district court's judgment, and remand for resentencing. We affirm the district court's judgment in case No. 22-4030.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED IN PART,
VACATED IN PART,
AND REMANDED*