

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 31, 2008

Charles R. Fulbruge III
Clerk

No. 08-40342
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ERIC GARCIA

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:08-CR-101-ALL

Before DAVIS, GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

Eric Garcia appeals the sentence imposed after the district court revoked the term of supervised release that he was serving in connection with his 2006 conviction for conspiracy to possess with the intent to distribute marijuana. Garcia argues that the district court's written judgment of revocation conflicts with its oral pronouncement of sentence. The Government agrees. Because the parties had no opportunity at sentencing to consider or object to the written

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

judgment, we review for abuse of discretion. See *United States v. Bigelow*, 462 F.3d 378, 381 (5th Cir. 2006).

Garcia pleaded true at his revocation hearing to violating the terms of his supervised release. The district court consequently revoked Garcia's term of supervised release and imposed a six-month term of imprisonment. In addition, the court, *inter alia*, imposed as a special condition that Garcia undergo a four-month period of electronic monitoring. The district court did not mention any form of home confinement during its sentencing pronouncement. However, the written judgment specifically imposed on Garcia the special condition of four months of home detention with the possibility of electronic monitoring.

If a written entry of judgment conflicts with an oral pronouncement at a sentencing hearing, the oral pronouncement controls. *Bigelow*, 462 F.3d at 381, 383. Accordingly, because the district court's oral pronouncement of sentence conflicts with its written judgment with regard to the imposition of home detention as a special condition, the case is remanded for the district court to amend the written judgment to conform to the district court's oral pronouncement of sentence. See *United States v. Martinez*, 250 F.3d 941, 942 (5th Cir. 2001).

REMANDED.