

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

March 16, 2010

\_\_\_\_\_  
No. 09-40391  
Summary Calendar  
\_\_\_\_\_

Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

MIGUEL PEREZ-HERNANDEZ

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:04-CR-676-1  
\_\_\_\_\_

Before JONES, Chief Judge, and DAVIS and WIENER, Circuit Judges.

PER CURIAM:\*

Miguel Perez-Hernandez appeals the sentence imposed following the revocation of his supervised release. Specifically, he appeals the district court's reimposition of a \$100 special assessment. Perez-Hernandez argues that the assessment should be stricken from the written judgment because it is contrary to the oral pronouncement and evidence presented at the revocation hearing. He further contends that he is no longer obligated under 18 U.S.C. § 3013(b) to pay the assessment. The Government concedes that the district court lacked

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

authority to reimpose the special assessment and that it should be stricken from the written judgment.

A review of the transcript from the revocation hearing reflects that the district court's imposition of the special assessment is contrary to the oral pronouncement and evidence presented at the hearing. Moreover, as the Government also concedes, the district court lacked authority under 18 U.S.C. § 3583 to reimpose a special assessment. *See United States v. Pineda*, \_\_F.3d\_\_, No. 08-41301, 2010 WL 199878, at \*1 (5th Cir. Jan. 22, 2010). Accordingly, the district court's judgment is REFORMED to omit the \$100 special assessment.

**JUDGMENT AFFIRMED AS REFORMED.**