IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
July 13, 2010
Lyle W. Cayce
Clerk

No. 09-40473

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

EDWARD THOMAS VESS,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:08-CR-1248-1

Before DAVIS, SMITH, and HAYNES, Circuit Judges.

PER CURIAM:*

Edward Thomas Vess appeals from the sentence imposed following his conviction for two counts of transporting illegal aliens within the United States by means of a motor vehicle. He is specifically challenging the special condition of his supervised release, which delegates to the probation officer the decision whether Vess should participate in a mental health treatment program. Citing *United States v. Albro*, 32 F.3d 173, 174 (5th Cir. 1994), Vess argues that the district court committed plain error when it impermissibly delegated its Article

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

III power to impose conditions of supervised release by giving the probation officer discretion to decide whether he should participate in a mental health treatment program.

Vess's argument is foreclosed by our circuit precedent, issued after his brief was filed in this case. *United States v. Bishop,* 603 F.3d 279 (5th Cir. 2010)(holding that imposition of such a condition is not plain error). The judgment is

AFFIRMED.