IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-10060
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
September 14, 2018
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DAVID NEAL LOONEY,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:06-CR-108-1

Before DAVIS, HAYNES, and GRAVES, Circuit Judges.

PER CURIAM:*

David Neal Looney appeals the 10-month sentence imposed on revocation of supervised release. His violation of supervised-release conditions was deemed Grade B, which is defined in relevant part as conduct that would constitute a crime punishable by more than a year in prison. He argues that there was no showing that he possessed images depicting minors engaged in

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

sexually explicit conduct as required to constitute the federal felony of possession of child pornography.

We review only for plain error because Looney did not object in the district to the finding of a Grade B violation. *See United States v. Davis*, 602 F.3d 643, 646-47 (5th Cir. 2010). To establish plain error, Looney must first show at least a forfeited error that is clear or obvious. *See id.*

Regardless of whether Looney's claim is foreclosed under *United States v. Claiborne*, 676 F.3d 434, 438 (5th Cir. 2012), and *United States v. Lopez*, 923 F.2d 47, 50 (5th Cir. 1991), the claim fails because there is no plain error. Looney admitted relapsing into "his old behaviors," which had resulted in his underlying conviction for possession of child pornography, and he admitted accessing pornography depicting underage children. Any failure by the district court to sua sponte notice the allegedly non-criminal nature of the images was not a "clear and obvious error." *See Davis*, 602 F.3d at 646-67; *Lopez*, 923 F.2d at 50.

The judgment is AFFIRMED.