

United States Court of Appeals for the Fifth Circuit

No. 22-10794
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 3, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

WESLEY JOROME HARRIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:17-CR-470-1

Before KING, HIGGINSON, and WILLETT, *Circuit Judges.*

PER CURIAM:*

Wesley Jorome Harris was sentenced to 21 months' imprisonment and a three-year term of supervised release following his 2018 conviction for possession of a synthetic cannabinoid with intent to distribute. His term of supervised release was revoked in 2022. On appeal he challenges for the first time the constitutionality of 18 U.S.C. § 3583(g), which mandates revocation

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 22-10794

of supervised release and a term of imprisonment for any offender who violates certain conditions of supervised release, including possessing a controlled substance.

Relying on *United States v. Haymond*, 139 S. Ct. 2369 (2019), Harris contends that § 3583(g) is unconstitutional because it requires revocation of a term of supervised release and imposition of a term of imprisonment without affording the defendant the constitutionally guaranteed right to a jury trial. He concedes that his challenge is foreclosed by *United States v. Garner*, 969 F.3d 550 (5th Cir. 2020), and raises the issue to preserve it for further review. The Government has filed an unopposed motion for summary affirmance and, alternatively, for an extension of time to file its brief.

In *Garner*, we rejected the argument that Harris advances and held that § 3583(g) is not unconstitutional under *Haymond*. *See Garner*, 969 F.3d at 551-53. Thus, Harris's sole argument on appeal is foreclosed. Accordingly, the Government's motion for summary affirmance is GRANTED, its alternative motion for extension of time is DENIED as moot, and the judgment of the district court is AFFIRMED. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).