

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 11-11188  
Non-Argument Calendar

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT  
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D.C. Docket No. 2:07-tp-14005-DLG-1

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

TODD ERLING BECKER,

Defendant–Appellant.

Appeal from the United States District Court  
for the Southern District of Florida

(October 12, 2011)

Before HULL, PRYOR and KRAVITCH, Circuit Judges.

PER CURIAM:

Todd Erling Becker appeals his sentence of two years’ imprisonment followed by one year of supervised release, which the district court imposed after

revoking his supervised release. Becker argues that 1) the district court lacked jurisdiction to rule on his revocation petition because pretrial detention does not constitute imprisonment and does not toll the supervised release term; and 2) under 18 U.S.C. § 3583 the maximum sentence permissible for revocation of supervised release was two years, so the district court erred when it sentenced him to two years' imprisonment to be followed by one year of supervised release.

I.

In October 2003, Becker was convicted of money laundering in the Eastern District of Texas. The district court sentenced him to 51 months' imprisonment to be followed by three years' supervised release. Becker's sentence was to be served concurrently with any sentence imposed as a result of three pending state law felony charges in Florida. In November 2003, Becker pleaded guilty to some of those charges and was sentenced to 6 years' imprisonment to be followed by 10 years' probation. The remaining state charges were dismissed.

In April 2007, Becker was released from custody and began his term of supervised release. While on supervised release, Becker was not permitted to possess a firearm or engage in additional criminal conduct. His supervision was transferred to the Southern District of Florida. About two weeks after his release, while in Palm Beach County, Becker was arrested again, this time on state charges

of possession of a firearm by a convicted felon and solicitation to commit a home invasion robbery. Becker was then taken into custody for violating his probation that was imposed as a result of his November 2003 guilty plea in Florida.

Although he was held by Orange County officials from August 2007 until June 2009, he was eventually found not guilty of the probation violation charges. He was then transferred back to the authorities in Palm Beach County on June 18, 2009 to face the pending charges from the solicitation-of- home-invasion-robbery arrest. In December 2010, Becker was convicted in state court for solicitation to commit home invasion robbery with a firearm and was sentenced to 15 years' imprisonment.

Meanwhile, in June 2007, an arrest warrant was issued for Becker's violations of the terms of his supervised release, for the same conduct discussed above, in his federal money laundering case.<sup>1</sup> Becker then filed a motion to dismiss the supervised release petition for lack of jurisdiction. In the motion, he argued that because he began his supervised release on April 11, 2007, his supervision should have ended on April 10, 2010, thus the district court did not

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<sup>1</sup> Because jurisdiction has transferred to the Southern District of Florida, a district judge there signed the superseding petition, and added a second violation to the terms of Becker's supervised release. The government later dismissed the first supervised release violation, but the district court found that the government had sustained its burden to establish the second violation.

have jurisdiction to revoke his supervised release in January 2011. The United States responded that Becker's term of supervised release was tolled from the time of the new violation until his December 2010 conviction, thus his supervised release had not expired at the time of the revocation hearing. The district court denied Becker's motion to dismiss and sentenced him to two years' imprisonment to be followed by one year of supervised release. This is his appeal.

## II.

### A.

We review *de novo* whether a district court has jurisdiction to revoke a term of supervised release. *United States v. Johnson*, 581 F.3d 1310, 1311 (11th Cir. 2009). This court has observed that:

Although the Supreme Court has held that supervised release begins when a prisoner is released from federal custody, it has also noted that . . . “[a] term of supervised release does not run during any period in which the person is imprisoned in connection with a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days.”

*Id.* (quoting *United States v. Johnson*, 529 U.S. 53, 57 (2000)). Becker concedes that our ruling in *Johnson* forecloses his requested relief, but contends that he wants to preserve this issue for further appeal. Because Becker was detained for more than 30 days prior to his conviction on the state solicitation-of-a-home-invasion-robbery

charge, his term of supervised release was tolled while he was in custody and had not expired when the superseding revocation petition was filed. *Id.* at 1311. Thus, the district court properly exercised jurisdiction over the revocation petition.

B.

Becker next argues that the district court erred because the sentence it imposed exceeded the maximum sentence permissible for revocation of supervised release for money laundering. In support, Becker contends that the district court erred by ordering him to serve an additional year of supervised release upon completion of his two years' imprisonment.

We review the legality of a sentence, including the sentence imposed because of a revocation of supervised release, *de novo*. *United States v. Pia*, 345 F.3d 1312, 1313 (11th Cir. 2003). A district court may exercise its discretion to revoke a defendant's term of supervised release if it finds by a preponderance of the evidence that the defendant violated a condition of his supervised release. *United States v. Sweeting*, 437 F.3d 1105, 1107 (11th Cir. 2006). It is also within the district court's discretion to impose a revocation sentence, including imprisonment. *Id.*

The statutory maximum term of imprisonment to be imposed upon a revocation of supervised release is determined by the class of the original offense

of conviction. 18 U.S.C. § 3583(e)(3). The money laundering offense that resulted in Becker's original term of supervised release carries a statutory maximum of 20 years' imprisonment and qualifies as a Class C felony. 18 U.S.C. § 1956(a). The maximum term of supervised release for a Class C felony is, "not more than three years." *Id.* at § 3583(b)(2). Section 3583(h) allows for supervised release following revocation, but limits it to "the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release."

Here, the district court sentenced Becker to two years of imprisonment to be followed by one year of supervised release. The difference between the three-year maximum term of supervised release that was authorized for the original money laundering offense, pursuant to § 3583(b)(2), and the two years' imprisonment imposed by the district court is one year. Thus, the district was statutorily permitted to impose up to one year of supervised release, in addition to the two year term of imprisonment, for Becker's supervised release violation; it did just that. Accordingly, the district court is **AFFIRMED**.