

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

April 6, 2022

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DE'SHAUGHN JAHMALL MAYS,

Defendant - Appellant.

No. 21-1281
(D.C. No. 1:15-CR-00467-RM-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MORITZ, BRISCOE, and CARSON**, Circuit Judges.

De'Shaughn Mays challenges the suspicionless-search condition of his supervised release, arguing that it is overbroad because it authorizes searches in locations where weapons could not be found. But because the safety concerns justifying this search condition extend beyond possession of weapons, we see no abuse of discretion in the district court's decision to impose this condition and accordingly affirm.

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. But it may be cited for its persuasive value. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

Background

In 2016, Mays pleaded guilty to being a felon in possession of a firearm; the district court sentenced him to 54 months in prison and three years of supervised release. As relevant to this appeal, the Probation Office recommended imposing a special condition of supervised release allowing probation officers to search Mays and his property if they had reasonable suspicion that Mays had violated the terms of his supervised release. It recommended this condition because of Mays’s conviction for possessing a gun and his prior violent crimes. According to the Probation Office, this search condition would help enforce the standard conditions of release and control the risk to the public.

The district court agreed and imposed a special condition of supervised release requiring Mays to “submit his person, property, house, residence, papers, computers . . . , other electronic communications or data[-]storage devices or media, or office, to a search conducted by a United States probation officer.” R. vol. 1, 18. The condition further provided that any such search must (1) be supported by reasonable suspicion that Mays “violated a condition of his supervision and that the areas to be searched contain evidence of this violation” and (2) “be conducted at a reasonable time and in a reasonable manner.” *Id.* The district court justified this condition—over Mays’s objection—by noting Mays’s history of gang membership, gun possession, violence, homicidal and suicidal thoughts, and other mental-health struggles. It concluded that this condition was needed “both to protect the public and to increase the deterrent [e]ffect . . . for future gun possession, as well as for protection of the probation

officer.” R. vol. 3, 11. We affirmed Mays’s sentence on direct appeal, rejecting his substantive-unreasonableness argument. *United States v. Mays*, 680 F. App’x 674 (10th Cir. 2017).

Mays completed his prison sentence in May 2020 and began serving his term of supervised release. One year later, his probation officer petitioned to revoke his supervised release, alleging that between October 2020 and April 2021, Mays failed seven drug tests, missed two mandatory counseling appointments, failed to participate in 11 required random drug tests, failed to call a drug-testing line at least seven times, and failed to take his prescribed psychiatric medications. The petition additionally noted that Mays had “displayed signs of paranoia.” R. vol. 1, 33.

The petition also described in detail a troubling event that occurred during an arranged meeting between Mays and two probation officers. The officers met Mays in a public parking lot, and Mays became agitated after one officer asked Mays about a recent positive drug test. The petition stated that Mays “instantly and very suddenly acted out with explosive conduct. His eyes bulged from his head[;] he puffed his chest[;] he balled his hands into fists[;] and with his right hand began punching the left palm of his hand.” *Id.* The petition further noted that Mays yelled loudly that he had not used any drugs, began pacing, “and then took three aggressive steps towards the [officers] while yelling” the name of the violent gang he was affiliated with. *Id.* Both officers retreated, concerned for their safety, and watched from a distance as Mays continued to pace and yell for another five minutes. The petition characterized Mays’s behavior as “pre[]ursors to assault” and concluded by noting that Mays’s

“erratic behavior and mental instability [wa]s increasing and [wa]s a community and officer[-]safety risk.” *Id.*

At the revocation hearing, Mays admitted to the violations, and the two probation officers testified about their parking-lot encounter with Mays. Mays, for his part, told the district court that he had apologized to his probation officer after the parking-lot encounter and said that he did not mean the officers any harm.

As it did in relation to Mays’s initial conviction, the Probation Office recommended that the district court impose the same special condition authorizing reasonable-suspicion searches, contending that Mays’s drug use while on supervised release placed the community and probation officers at significant risk. The district court agreed but decided that the circumstances warranted a broader search condition, citing officer-safety concerns arising from the parking-lot encounter. It therefore imposed a search condition without a reasonable-suspicion requirement, requiring Mays to submit his “person, property, house, residence, papers, or office, to a search conducted by a . . . probation officer.” *Id.* at 42. The only limitation on this condition is that “[a]ny search must be conducted at a reasonable time and in a reasonable manner.” *Id.*

The district court overruled Mays’s objection to the suspicionless-search condition and ultimately imposed a 14-month prison sentence to be followed by a new 18-month term of supervised release. Mays appeals, challenging the suspicionless-search condition as overbroad.

Analysis

“We review the district court’s decision to impose special conditions of supervised release for abuse of discretion.” *United States v. Blair*, 933 F.3d 1271, 1275 (10th Cir. 2019) (quoting *United States v. Wayne*, 591 F.3d 1326, 1331 (10th Cir. 2010)). As a general matter, “district courts have broad discretion to prescribe conditions on supervised release.” *Id.* But that discretion is not unlimited. *See id.* In addition to being reasonably related to certain sentencing factors and consistent with the Sentence Commission’s policy statements, a special condition of supervised release must not be overbroad; that is, it must “involve ‘no greater deprivation of liberty than is reasonably necessary for’ deterring criminal activity, protecting the public, and promoting a defendant’s rehabilitation.” *Id.* (quoting 18 U.S.C. § 3583(d)(2)); *see also* § 3583(d) (explaining process for imposing conditions of supervised release).

Mays argues that the suspicionless-search condition is overbroad because the district court imposed it in the interest of protecting officer safety, but it is not limited to “searches for the purpose of discovering weapons” or “to locations that weapons might be found.” Aplt. Br. 9. That is, he asserts the condition involves a greater deprivation of liberty than is necessary to protect the public (and probation officers) because it authorizes searches of his papers and other areas of property that are too small to contain a weapon. Yet even though Mays’s underlying conviction is for being a felon in possession of a weapon, the facts in this case demonstrate that the

safety concerns motivating the search condition in this case extend well beyond weapon possession.

As the government explains, “the record shows that Mays’[s] failure to take his medications as prescribed, his gang affiliation, and his drug use also make him dangerous.” Aplee. Br. 13–14. For instance, the dangerous parking-lot encounter did not involve a weapon; instead, the danger stemmed from Mays’s explosive behavior, physical aggression, and his decision to shout out his affiliation with a gang known for violence. Further, Mays’s conduct during this incident and while on supervised release is connected to his substance abuse and failure to take his prescribed psychiatric medications. His probation officer, after detailing Mays’s many failed drug tests and discovering that Mays “had not been taking his medication as prescribed based on the amount of medication remaining in the bottle,” specifically reported that Mays’s “erratic behavior and mental instability [were] increasing.”

R. vol. 1, 32–33.

And critically, searches of Mays’s papers and property could uncover evidence of the dangerousness flowing from his medication issues, gang affiliation, and drug use. For instance, the search of Mays’s prescription bottles led the probation officer to discover that Mays was not taking his medication as directed. Likewise, the government points out that searches of Mays’s cellphone (at least potentially authorized under the word “property” in the search condition) could reveal photos of Mays with a gun or text messages showing Mays engaging in prohibited communication with gang members.

Accordingly, Mays’s position—that the condition involves a greater deprivation of liberty than necessary to protect the public and his probation officers because searches of his papers, cellphone, or other small areas of property would not turn up actual weapons—lacks merit. Indeed, we have previously approved of a similar suspicionless-search condition. *See United States v. Hanrahan*, 508 F.3d 962, 971 (10th Cir. 2007). Mays contends that *Hanrahan* is distinguishable because (1) the condition there was limited to the defendant’s “person, property, or automobile,” not extending to his papers, and (2) we did not specifically consider the narrow question of whether the condition imposed a greater deprivation of liberty than reasonably necessary. *Id.* Yet *Hanrahan* nevertheless supports the conclusion that broad suspicionless-search conditions of supervised release can be appropriate in particular circumstances. *Id.*; *see also United States v. White*, 244 F.3d 1199, 1201, 1208 (10th Cir. 2001) (approving special condition authorizing suspicionless searches of home, automobile, and person). And the district court did not abuse its discretion in concluding that such circumstances existed here, particularly because part of Mays’s dangerousness stems from his failure to take psychiatric medications as prescribed, and the details of those prescriptions could be discovered in a search of his papers. Moreover, we note that the district court only broadened the special condition to allow suspicionless searches after a prior search condition requiring reasonable suspicion failed to adequately deter Mays from violating the conditions of his supervised release numerous times. *See United States v. Perez*, 666 F. App’x 735, 737–38 (10th Cir. 2016) (unpublished) (finding no abuse of discretion in special

condition authorizing reasonable-suspicion searches of defendant’s person, property, house, residence, papers, and electronic devices given defendant’s “apparent inability to abide by even standard conditions of supervised release”);¹ *United States v. Egli*, 13 F.4th 1139, 1148–49 (10th Cir. 2021) (finding special condition barring internet access not plainly erroneous in part because district court did not impose such harsh condition until fourth violation of supervised release); *United States v. Cervantes*, 859 F.3d 1175, 1184 (9th Cir. 2017) (concluding suspicionless-search condition did not involve greater deprivation of liberty than necessary in part because defendant had “a lengthy history of violating the conditions of previously imposed terms of supervision”).

Conclusion

Under the facts of this case, the district court did not abuse its discretion in imposing the suspicionless-search condition. We affirm.

Entered for the Court

Nancy L. Moritz
Circuit Judge

¹ We rely on the unpublished decision in *Perez* for its persuasive value. See 10th Cir. R. 32.1(A).