

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Argued October 30, 2025

Decided February 10, 2026

Before

JOHN Z. LEE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 25-1015

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ERIK HARBIN,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of
Indiana, South Bend Division.

No. 3:15CR40-001

Damon R. Leichty,
Judge.

ORDER

After his release from prison, Erik Harbin violated numerous conditions of his supervised release. The district court revoked Harbin's supervised release and sentenced him to 15 months' imprisonment followed by 18 months of supervised release. On appeal, Harbin argues the district court procedurally erred by improperly relying on certain factors when determining his sentence upon revocation in violation of 18 U.S.C. § 3583. For the reasons below, we affirm.

I. BACKGROUND

In 2015, Erik Harbin pled guilty to one count of unlawfully possessing a firearm as a convicted felon, in violation of 18 U.S.C. § 922(g)(1). At sentencing, the district court found Harbin used a pistol to kidnap his wife at gunpoint. The court sentenced Harbin to 117 months' imprisonment—3 months below the applicable statutory maximum—followed by 3 years of supervised release. Harbin began serving supervised release on March 26, 2024. In a petition to revoke Harbin's supervised release, filed September 12, 2024, the probation office outlined various violations, including committing another crime, unlawfully using a controlled substance, and failing to participate in substance abuse and mental health treatment programs.

At the revocation and sentencing hearing on December 18, 2024, Harbin represented himself, with counsel on standby. He admitted to violating two conditions of his supervised release: committing another crime and using a controlled substance. The district court agreed with Harbin and found additional violations, including failure to report on specified dates and failure to attend substance abuse and anger management treatment sessions. The district court concluded Harbin's cocaine use sufficiently established a felony-level violation of Indiana law, increasing his conduct to a Grade B violation. Based on these violations, the court revoked Harbin's supervised release.

The district court then turned to sentencing. The court concluded Harbin's most serious violation was the possession of cocaine. Based on that Grade B violation and Harbin's criminal history category of VI, the court concluded the applicable sentencing range was 21 to 24 months.¹ The court also noted it could impose a supervised release term of up to 3 years.

The government urged the court to impose 15 months' imprisonment followed by 18 months' supervised release. The government discussed Harbin's short time on supervised release before the violations, the need for rehabilitation, and the need to deter Harbin from further criminal activity. In mitigation, Harbin testified about his participation in programming while incarcerated, his attempts to seek help for his drug addiction while on supervision, and his entrepreneurial pursuits to better his life. He asked the court not to sentence him to prison, but instead order him to a twelve-month placement in community corrections.

¹ The top end of the range was capped by a statutory maximum.

After hearing the parties' arguments, the district court imposed a sentence of 15 months' imprisonment, followed by 18 months of supervised release, with the first 6 months served on home detention.

The court "considered the pertinent 3553(a) factors" in imposing that sentence. The court appreciated Harbin's efforts at rehabilitation, stating,

I also appreciate your desire to have that moment where you can prove yourself to make that first step, as you call it. And you had that, in truth, Mr. Harbin. Supervision is granted as a grace, an alternative to a prison term. It merely required your compliance.

The court then discussed the offense conduct underlying Harbin's 2015 conviction:

And the violations of that then are a breach of the Court's trust, and that's a trust that's placed in you based on the original offense. And your original offense, of course, was quite serious, for which you received a significant sentence back then of 117 months and then that 3 years of supervision, and I won't walk through the nature of that offense. You were sentenced for that. But I think it's always important to recall, any time the Court gets to a revocation, that this is still very much rooted in the grace that you were afforded as part of that original offense.

Next, the court discussed the relative seriousness of Harbin's supervised release violations. It described his cocaine possession as "quite serious." It also noted "any type of conviction ... is also serious, albeit [Harbin's] one conviction" constituting a supervised release violation was "a misdemeanor."

Then, the court remarked that for Harbin's "history and characteristics," he already had a significant criminal history at the time of his original sentencing, so further offenses such as drug possession did not suggest Harbin would be "compliant or that supervised release [would] be as effective." The court also credited Harbin for the programming he had completed, steps he'd taken towards rehabilitation, and his interactions with probation.

The court then stated:

The reality is you did breach the Court's trust and the grace that was afforded to you by way of supervision, particularly given the nature of your

-- your violations hinge back to your original offense. Someone who is continuing to use, possess cocaine, a significant drug, well, that's just a slide at that point, Mr. Harbin. And when that occurs, there is, in my mind, not just a need for deterrence but a need for public protection, and that's certainly true here, and those needs do support the Court's sentence today.

After weighing these factors and giving the parties an opportunity to voice any additional concerns, the district court imposed Harbin's sentence. Harbin now appeals.

II. DISCUSSION

The Supreme Court's decision in *Esteras v. United States* prohibits sentencing courts from considering the seriousness of a defendant's original criminal offense when deciding whether to revoke the defendant's term of supervised release and impose an additional term of imprisonment. 606 U.S. 185, 195 (2025). Harbin mounts a procedural challenge to his revocation sentence, arguing the district court ran afoul of *Esteras* by relying on the seriousness of his original 2015 conviction in imposing that revocation sentence.

We typically review procedural challenges to a criminal sentence de novo. *United States v. Ballard*, 12 F.4th 734, 740 (7th Cir. 2021). The government argues Harbin did not adequately preserve the procedural challenge he raises on appeal, so *Esteras* requires us to review for plain error. *Esteras*, 606 U.S. at 202–03 (citing FED. R. CRIM. P. 52(b)); *see also United States v. Pankow*, 884 F.3d 785, 790–91 (7th Cir. 2018) (reviewing inadequately preserved procedural challenges for plain error). Harbin contends we should review his challenge de novo because under Federal Rule of Criminal Procedure 51(a), he was not required to take exception or object to the district court's sentencing explanation. *See, e.g., United States v. Wood*, 31 F.4th 593, 597 (7th Cir. 2022); *see also United States v. Stewart*, 148 F.4th 501, 509 n.3 (7th Cir. 2025) (observing the Supreme Court in *Esteras* “was not discussing Federal Rule of Criminal Procedure 51(a), so we do not understand it to have upset our crystal clear precedent on that rule” (internal quotations omitted)), *petition for cert. filed*, No. 25-6038 (Nov. 5, 2025); *United States v. Richards*, 161 F.4th 490, 493 n.* (7th Cir. 2025) (reiterating our observation in *Stewart*). We need not resolve the parties' dispute over what standard of review to apply, however, because under either standard, the district court did not err when imposing Harbin's sentence.

Generally, 18 U.S.C. § 3553(a)(1)–(7) sets forth the factors a district court may consider when sentencing a defendant. Section 3553(a)(2) in particular “captures the

traditional heartland of criminal sentencing.” *Esteras*, 606 U.S. at 191. That section requires courts to consider:

(2) the need for the sentence imposed —

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner[.]

18 U.S.C. § 3553(a)(2). These four factors map onto the four core purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation. *Esteras*, 606 U.S. at 191.

When a court decides to revoke a defendant’s supervised release, the court may consider a subset of the § 3553(a) factors. *See* 18 U.S.C. § 3583(e). Specifically, the court may consider “the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7).” *Esteras*, 606 U.S. at 192. Absent from that list, as relevant here, is § 3553(a)(2)(A), the provision capturing retribution.

The Supreme Court held in *Esteras* that “[d]istrict courts cannot consider § 3553(a)(2)(A) when revoking supervised release.” *Id.* at 195. Specifically, in determining whether to revoke a defendant’s supervised release, a district court may not exact retribution for the defendant’s “offense”—his underlying crime of conviction. *Id.* at 193–94. So, the bottom line after *Esteras* is courts cannot consider § 3553(a)(2)(A), including the seriousness of the defendant’s original offense, when revoking a term of supervised release and imposing a new sentence. Instead, courts must consider only the sentencing factors listed in § 3583(e), which are: the nature and circumstances of the offense; the defendant’s history and characteristics; the need to deter criminal conduct, protect the public, and provide the defendant with training, medical care, or other correctional treatment; sentencing recommendations and policy statements from the United States Sentencing Commission; the need to avoid unwarranted sentencing

disparities among similar defendants; and the need for victim restitution. *United States v. Martin*, 109 F.4th 985, 989–90 & n.3 (7th Cir. 2024).

District courts may also impose a revocation sentence based on a defendant's breach of trust. *United States v. Dawson*, 980 F.3d 1156, 1162 (7th Cir. 2020). This is permissible because a revocation sentence's purpose "is not to punish a defendant's violation as if it were a new federal crime, but rather to sanction the defendant's breach of the court's trust—that is, his or her failure to comply with court-ordered conditions arising from the original conviction." *Id.* The Supreme Court in *Esteras* took "no position" on whether the defendant's breach of trust "is a permissible consideration." 606 U.S. at 194 n.5.

Here, the district court did not err because it did not impose Harbin's revocation sentence as retribution for his underlying 2015 conviction. The district court referenced the seriousness of Harbin's original offense at the start of its sentencing rationale, but that reference, when put in context, does not show the district court based its decision to revoke Harbin's supervised release or his sentence on that seriousness. Rather, the district court based its revocation sentence on Harbin's breach of the court's trust—the district court put its trust in Harbin not to violate the terms of his supervision. That framing remains permissible after *Esteras*. The district court also referred to the "grace" Harbin received with his 2015 sentence, but those references were part and parcel of the district court's breach of trust rationale. Additionally, the district court explicitly declined to walk through the nature of Harbin's 2015 offense and acknowledged that he had already been sentenced for that offense. This further signaled the district court viewed this offense as separate from the revocation sentence it was imposing. Despite Harbin's contention otherwise, the district court's initial reference to his 2015 offense does not show it sentenced Harbin based on the seriousness of that offense.

Nor did the district court's later reference to Harbin's original offense indicate the court imposed its revocation sentence to punish Harbin for the seriousness of his 2015 offense. The court again framed its reference to Harbin's original offense in breach of trust terms, explaining Harbin breached the court's trust, especially as the "nature" of his supervised release violations "hinge[d] back" to his original offense. The court then connected Harbin's original offense conduct to his continued drug use, which the court deemed a "slide." The court then explained this slide signaled a forward-looking need for deterrence and public protection, both permissible considerations under § 3583(e). Simply put, nothing in the district court's sentencing explanation suggests it imposed its revocation sentence as punishment for Harbin's original offense. *See Esteras*,

606 U.S. at 203 (suggesting “a stray reference to a § 3553(a)(2)(A) factor” is not reversible error when that reference “was intended to bear on another § 3553(a) factor or merely prefatory”). We see no error in the district court’s rationale for the revocation sentence it imposed.

AFFIRMED