UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-2490

UNITED STATES OF AMERICA

v.

THOMAS AUTRY, A/K/A SHAKE,
APPELLANT

On Appeal from the U.S. District Court, E.D. Pa.
Judge Wendy Beetlestone, No. 2:19-cr-00388-001

Before: SHWARTZ, MONTGOMERY-REEVES, and RENDELL,
Circuit Judges
Submitted: Nov. 9, 2026; Filed: Nov. 10, 2026

OPINION OF THE COURT

SHWARTZ, Circuit Judge.

Thomas Autry appeals his sentence for violating the conditions of his supervised release. Because the District Court's sentence was consistent with 18 U.S.C. § 3583 and Esteras v. United States, 606 U.S. 185 (2025), and it appropriately sanctioned Autry for breaching the Court's trust, we will affirm.

I

Autry pleaded guilty to various drug and firearm offenses and faced a Sentencing Guideline range of 231 to 252 months' imprisonment. After a downward departure and variance, Autry was sentenced to his time-served of fifty-four months and eighteen days' imprisonment, followed by eight years of supervised release. The terms of supervised release required, among other things, that he commit no other crimes.

About a year into his term of supervised release, Autry was arrested after police officers observed him possibly selling crack cocaine. As a result, the Probation Office filed a petition asserting that Autry had violated the "no crime" provision of his supervised release. At the violation of supervised release ("VOSR") hearing, the District Court heard testimony from the police officers and concluded that the Government had proven by a preponderance of the evidence that Autry had committed a drug crime, and thus, a Grade A violation of supervised release.

To determine Autry's sentence for this violation, the District Court first calculated a Guidelines range of thirty to thirty-seven months' imprisonment, based on his Grade A violation and criminal history category of III. It then listed the factors from 18 U.S.C. § 3553(a) it would consider in formulating Autry's sentence.[1] The Court did not mention the

[1] The Court stated that it would consider the following in its § 3553(a) analysis:

> [T]he nature and circumstances of the offense and the history and characteristics of the defendant, the need to de[t]er criminal conduct, to protect the public from further crime of the

factors in § 3553(a)(2)(A), the "need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense," or § 3553(a)(3), "the kinds of sentences available."

After hearing the parties' arguments, the District Court reminded Autry that he was only incarcerated for a "miniscule fraction" of the total amount of time he could have spent in prison due to a departure and variance, App. 194, and discussed the comment to the Guidelines for VOSR sentences providing that "[w]here the original sentence was the result of a downward departure . . . that resulted in a sentence below the guideline range applicable to the defendant's underlying conduct, an upward departure may be warranted."[2] U.S. Sent'g Guidelines Manual § 7B1.4 cmt. n.4 (U.S. Sent'g Comm'n, Nov 1, 2024) (U.S.S.G). The Court then stated that it would "not . . . do that" but would instead "go to the top" of the

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> defendant, to provide the defendant with needed educational, vocational training, medical care or other correctional treatment in the most effective way, any pertinent policy statement, the rationale of sentencing for a violation . . . to sanction primarily the defendant's breach of trust, the seriousness of the underlying violation, the need to avoid sentencing disparities, the need to provide restitution.

App. 190.

[2] The Guidelines Manual was revised on November 1, 2025 (after Autry's VOSR hearing), and this comment was removed. See U.S. Sent'g Guidelines Manual § 7C1.5 (U.S. Sent'g Comm'n, Nov. 1, 2025) (U.S.S.G.).

Guidelines range of thirty-seven months' imprisonment. App. 194.

Finally, the District Court explained that it was concerned that Autry's "behavior ha[d] not changed" since his initial sentencing, that Autry was on a "slippery slope," and that he had "violat[ed] . . . [the] trust" of both the Court and the Probation Office by violating the terms of his supervised release. App. 195.

Autry appeals.

II[3]

[3] The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). Because Autry did not object to the procedural reasonableness of his sentence before the District Court, we review it for plain error. Fed. R. Crim. P. 52(b); United States v. Simmons, 69 F.4th 91, 94 (3d Cir. 2023). In

A

For a VOSR sentence to be procedurally reasonable, a sentencing court must consider the applicable Guidelines range and certain factors listed in § 3553(a), including the nature and circumstances of the offense, and the need for the sentence to deter criminal conduct, rehabilitate the defendant, and protect the public. 18 U.S.C. § 3583(e)(3); see id. § 3553(a)(1), (2)(B)-(D), (4)-(7); United States v. Clark, 726 F.3d 496, 500 (3d Cir. 2013). Section 3583(e) specifically omits from consideration in connection with a VOSR the factors set forth in § 3553(a)(2)(A), which require a sentencing court, when sentencing a defendant for his offense of conviction, to consider the "need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense," and § 3553(a)(3), which requires consideration of "the kinds of sentences available." Thus, a court may not consider whether the VOSR sentence is necessary to punish the defendant for the "seriousness" of the underlying offense of conviction or to exact "retribution" for that crime. Esteras, 606 U.S. at 188, 193-94, 203-04 (holding that courts cannot consider the

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reviewing for plain error, "we must decide whether (1) an error occurred, (2) the error is 'plain,' and (3) it 'affect[s] substantial rights.'" United States v. Payano, 930 F.3d 186, 192 (3d Cir. 2019) (alteration in original) (quoting United States v. Olano, 507 U.S. 725, 732 (1993)). If these conditions are met, "a court of appeals should exercise its discretion to correct the error if it would 'seriously affect[] the fairness, integrity or public reputation of judicial proceedings.'" Id. (alteration in original) (quoting Olano, 507 U.S. at 732).

"retributive purpose" of § 3553(a)(2)(A) when revoking supervised release under § 3583(e)).

Contrary to Autry's argument, the District Court considered the factors set forth in § 3583(e) and excluded any consideration of those in § 3553(a)(2)(A) and (a)(3). Although the District Court mentioned its prior leniency in its original below- Guideline sentence, read in context, the Court's reference to this topic does not demonstrate that it relied on the prohibited retributive considerations of § 3553(2)(A). Instead, the Court's discussion of the prior sentence reflects its concern that Autry had "not changed [his behavior]," despite having been given the opportunity to do so, and that he was on a "slippery slope" back into drug trafficking. App. 195. In other words, the Court concluded it had to impose a top-of-the-Guidelines sentence to deter Autry from engaging in future criminal activity and to protect the public. These are permissible VOSR sentencing considerations. 18 U.S.C. § 3583(e); id. § 3553(a)(2)(C), (D).

The District Court's reference to note 4 of the Guidelines' commentary to § 7B1.4(d)(1), which states that an upward departure may be warranted when sentencing for a VOSR where the original sentence falls below the Guidelines range because of a downward departure, does not disturb our conclusion that Autry's sentence complied with § 3583(e). Contrary to Autry's argument, the Court's remarks did not evince a desire to "compensate for" its earlier leniency in a retributive manner. Appellant Br. at 11. First, the Court did not apply note 4. Second, even if it had, it is not clear why that would render the sentence retributive, particularly here, where the Court clearly imposed a stringent sentence for Autry's

VOSR because it believed that Autry had not been deterred from engaging in criminal conduct.

Because "it is [not] clear or obvious that the [D]istrict [C]ourt actually relied on § 3553(a)(2)(A) . . . either expressly or by unmistakable implication," Esteras, 606 U.S. at 203 (internal quotation marks omitted), we cannot say that retributive considerations played a role in the sentence it imposed and thus, the Court committed no error, plain or otherwise.

B

Autry's VOSR conduct reflects a breach of the trust the District Court bestowed on him when it placed him on supervised release, and the resulting sentence sanctioned him for that breach. "A district court's primary consideration in handing down a revocation sentence is the defendant's breach of [the court's] trust." United States v. Dees, 467 F.3d 847, 853 (3d Cir. 2006). The "breach of trust" consideration is present both in our caselaw, id., and in the Sentencing Guidelines that were in effect at the time of Autry's VOSR sentencing. U.S.S.G. ch. 7, pt. A, introductory cmt. (Nov. 1, 2024) (stating "at revocation the court should sanction primarily the defendant's breach of trust, while taking into account, to a limited degree, the seriousness of the underlying violation and the criminal history of the violator").[4] Here, the

[4] The Sentencing Guidelines that became effective November 1, 2025, retained an Introductory Commentary that addressed a defendant's "breach of trust," but separated provisions related to violations of probation and supervised release into two Parts, 7B and 7C respectively. U.S.S.G. ch. 7,

District Court found that Autry "violat[ed] [the] trust" of both the Court and the Probation Office, and that breach appropriately informed its sentence. App. 194.[5]

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pt. A, introductory cmt., pt. B, pt. C (Nov. 1, 2025). Although the Introductory Commentary to the newly added Part 7C does not specifically mention the need to address a defendant's "breach of trust," the Introductory Commentary to all of Chapter 7, discusses "breach of trust." U.S.S.G. ch. 7, pt. A, introductory cmt. (Nov. 1, 2025).

[5] Autry relies on United States v. Seighman, 966 F.3d 237, 244 (3d Cir. 2020), to argue that justifying revocation of his supervised release based on his breach of the Court's trust "exceeds constitutional bounds" because "it amounts to a 'punishment for a new offense.'" Appellant Br. at 25 (quoting Seighman, 966 F.3d at 244). Seighman is inapt. Seighman involved a challenge to 18 U.S.C. § 3583's provision mandating revocation of supervised release and imprisonment for certain drug-related conduct while on supervised release. 966 F.3d at 243-244. In evaluating that challenge, we discussed United States v. Haymond, 588 U.S. 634 (2019), which held that a mandatory five-year prison sentence for certain sexual offenses while on supervised release stemming from a conviction for underlying sexual offenses was akin to punishment for a new offense. Id. at 645-48. Autry's argument challenging the constitutionality of a sanction for breaching the court's trust conflates punishment for a "new criminal offense[], . . . without granting a defendant the rights . . . that attend a new criminal prosecution," Id. at 659 (Breyer, J., concurring), with sanctioning a defendant for breaching the court's trust. While the former is prohibited, the latter is permitted. See Seighman, 966 F.3d at 244 (noting with approval that, "[i]ndeed, the District Court's frustration with

III

For the foregoing reasons, we will affirm.

Counsel for Appellant
Keith M. Donoghue
Federal Community Defender Office for the Eastern District of Pennsylvania

Counsel for Appellee
Everett Witherell
Robert A. Zauzmer
Office of United States Attorney

[the defendant]'s repeated breaches of trust resulted in a term of imprisonment to the maximum extent the statute permits"); U.S.S.G ch. 7, pt. A, introductory cmt. (Nov. 1, 2024).