FIL
United States Court of ppeals
enth Circuit

June 23, 2023

Christopher M. Wolpert
Clerk of Court

PUBLISH

U I S S COUR OF PP LS

FOR H E H CIRCUI

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DERALD WILFORD GEDDES

Defendant - Appellant.

No. 22-4053

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ppeal from the United States istrict Court
for the istrict of Utah
(.C. o. 1:15-CR-00093- C-1)

Josh Lee Assistant Federal Public Defender (Virginia L. Grady Federal Public Defender with him on the briefs) Denver Colorado for Defendant - Appellant.

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Gregory S. Knapp (David A. Hubbert Deputy Assistant Attorney General S. Robert Lyons Chief Criminal Appeals & Tax Enforcement Policy Section Katie Bagley and Joseph B. Syverson Tax Division Department of Justice with him on the brief) Washington D.C. for Plaintiff - Appellee.

Before **B CH AR CH K ELLY** and **BRISCO E** Circuit Judges.

K ELLY Circuit Judge.

Defendant-Appellant Derald Wilford Geddes was convicted by a jury of tax obstruction 26 U.S.C. § 7212(a) tax evasion 26 U.S.C. § 7201 and three counts of willfully filing false tax returns in the years 2011 2012 and 2013 26 U.S.C.

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§ 7206(1 as sentenced to five years in prison, three years of supervised release, and ordered to pay about $1.8 million in restitution. VI R. 1037–38. On appeal, he argues that (1) restitution was impermissibly ordered to begin during his imprisonment; (2) 16 conditions of supervised release were not pronounced orally at sentencing improperly appeared in the written judgment; and (3) one of those 16 conditions, the risk notification to third parties condition, is invalid under United States v. Cabral, 926 F.3d 687 (10th Cir. 2019). We have jurisdiction under 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291. We affirm in part, reverse in part, and remand to the district court to conform its written judgment consistent with our opinion.

Background

Mr. Geddes worked as a dentist in Ogden, Utah. I R. 35. After an audit and as of 2013, the IRS determined Mr. Geddes owed about $1.8 million in taxes, penalties, and interest. VI R. 736–37. Mr. Geddes represented himself at trial with assistance of standby counsel. II R. 91. The jury found Mr. Geddes guilty on all charges. VI R. 1006–07. At sentencing, the district court confirmed that Mr. Geddes and standby counsel had received the Presentence Report (PSR). Id. 1018. The PSR stated restitution "shall be ordered as a condition of supervised release." V R. 24. Restitution is a mandatory condition of supervised release under 18 U.S.C. § 3583(d) and the Sentencing Guidelines § 5D1.3(a)(6). The district court orally imposed the restitution obligation, stating it would waive the accrual of interest and that some

paymen d begin " hi e incarcera ed." VI R. 1039. The c r a s s a ed ha mee ing he paymen sched e as a c ndi i n s pervised re ease. Id. 1038.

The ri en j dgmen inc ded res i i n in i s gr p manda ry c ndi i ns f s pervised re ease and in a sec i n en i ed "Crimina Mone ary Pena ies." III R. 266, 269. In he sec i n ca ed "Sched e Paymen s" ing he pena ies sec i n, he j dgmen inc ded ins r c i ns r paymen begin d ring incarcera i n. Id. 270.

The PSR a s is ed r her c ndi i ns s pervised re ease ha are manda ry in b h he g ide ines and in 18 U.S.C. § 3583(d): (1) pr hibi i n n c mmi ing an her crime, (2) pr hibi i n n p ssessing a c n r ed s bs ance, (3) he DNA samp e req iremen , and (4) he dr g es ing req iremen . V R. 25. A sen encing, he dis ric c r ra y s spended he dr g es ing req iremen . VI R. 1037. The dis ric c r hen s a ed ha Mr. Geddes d be s bjec he DNA samp e req iremen and reminded him ha as a c nvic ed e n, he cann p ssess a irearm. Id. B he dis ric c r did n ra y imp se he pr hibi i ns n c mmi ing an her crime r n p ssessing a c n r ed s bs ance. Id.

The PSR a s s a ed Mr. Geddes "sha c mp y i h he s andard c ndi i ns s pervisi n as ad p ed by his C r ." V R. 25. I did n is any he s andard c ndi i ns. A sen encing, he dis ric c r did n re er s andard c ndi i ns r imp se c ndi i ns s pervised re ease ri arge, and a s made n express s a emen ha i as ad p ing he PSR. VI R. 1016–42. The dis ric c r did ra y s a e nine specia c ndi i ns ha d app y Mr. Geddes' erm s pervised

release, all c ad been l sted n t e PSR and ne c as a rest tut n c nd t n. Id. 1037–39; R. 26–27. Ne t er Mr. Geddes n r t e g vernment made bject ns dur ng sentenc ng. At t e end t e ear ng, t e d str ct c urt asked t e part es t ere as "[a]nyt ng else?" and b t repl ed t at t ere as n t. Id. 1040–42.

T e r tten judgment c nta ned t e n ne spec al c nd t ns as stated by t e d str ct c urt. III R. 268. H ever, t als c nta ned t e 16 add t nal c nd t ns superv sed release Mr. Geddes c mpla ns ere. T t ese c nd t ns ere statut ry mandat ry nes t at ad been r tten ut n t e PSR: pr b t ns n c mmitt ng an t er cr me and n p ssess ng a c ntr lled substance. Id. 266; see als 18 U.S.C. § 3583(d). T e t er 14 c nd t ns ere class ed as standard c nd t ns superv s n n t e r tten judgment. III R. 267. 13 t se ere standard c nd t ns rec mmended, but n t requ red, n every case by U.S.S.G. § 5D1.3(c). III R. 267. T e 14t c nd t n, c nsent t searc , s l sted as a spec al c nd t n n t e Gu del nes r sex enses but appeV rs n t e r tten judgment am ng t e l st "standard" c nd t ns. Id.; see U.S.S.G. § 5D1.3(d)(7)(C). T e g vernment c ntends t e c nsent-t -searc c nd t n s standard n t e D str ct Uta . Aplee. Br. at 16.[1]

[1] Under t e sentenc ng gu del nes, t s s a spec al c nd t n rec mmended r sex enses. U.S.S.G. § 5D1.3(d)(7)(C). T e pr bat n ce ebs te, n t t e c urt ebs te, r t e D str ct Uta l sts t s c nd t n n a d cument called "Standard C nd t ns Superv sed Release" t t e t er 13 c nd t ns t at t e sentenc ng gu del nes class y as standard. Standard C nd t ns Superv s n n t e D str ct

Discussio

et er t e district court erred by imposi g a freesta di g restitutio requireme t

We review his issue for plain error because Mr. Geddes made no objec ion a t sen encing. Thus, he mus show "(1) error (2) ha is clear or obvious under curren law, and which bo h (3) affec ed [his] subs an ial righ s and (4) undermined he fairness, in egri y, or public repu a ion of judicial proceedings." Uni ed S a es v. Mullins, 613 F.3d 1273, 1283 (10 h Cir. 2010); Fed. R. Crim. P. 52(b).

Res i u ion mus be au horized by s a u e and cour s do no have inheren power o order i . Uni ed S a es v. Delano, 981 F.3d 1136, 1139 (10 h Cir. 2020). Mr. Geddes argues he dis ric cour improperly imposed res i u ion as bo h a condi ion of supervised release ha required paymen ou side he erm of supervised release and as a frees anding obliga ion. Apl . Br. a 12. There is some ambigui y in t he wri en judgmen as o he manner of res i u ion. III R. 268–70.

To he ex en ha paymen is required ou side of supervised release, he

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U ah, t
h ps://www.u p.uscour s.gov/si es/u p/files/S andardCondi ionsOfSupervision.pdf.

The condi ions do no appear o be in a general or s anding order for he dis ric cour or o herwise on he cour websi e. See Apl . Reply Br. a 11. As Mr. Geddes no es, here is no indica ion who prepared his documen or where i came from. Id. a 11 n.3. Moreover, he proba ion office websi e s a es ha he cour "may" impose discre ionary condi ions and no hing abou he documen or websi e indica es ha his lis is deemed imposed in all cases. Compare Pos -Convic ion Supervision, U.S. Proba ion & Pre rial Servs., h ps://www.u p.uscour s.gov/pos - convic ion-supervision, wi h Uni ed S a es v. Rogers, 961 F.3d 291, 300 (4 h Cir. 2020) (discussing a s anding order which s a ed ha "[ ]he S anding Order i self expressly con empla es ha i will be incorpora ed orally a sen encing").

govern n e on e e plain error. Aplee. Br. a 10. Ti le 26 ax offen e are no li e in he Vi i an Wi ne Pro e ion A (VWPA or he Man a ory Vi i Re i u ion A (MVRA , whi h woul allow for free an ing re i u ion. 18 U.S.C. §§ 3583(, 3663(a (1 (A , 3663A(. Be au e re i u ion ube au horize by a u e, here i an only be i ope a a on i ion of upervi e relea e. 18 U.S.C.) § 3583(; Delano, 981 F.3 a 1139. Thu , he fir wo ep of plain error are a i fie .

An error affe a efen an ' ub an ial righ when i "affe [ ] he ou o e of he i ri our pro ee ing ." Delano, 981 F.3 a 1140–41 (al era ion in original (quo ing Uni e S a e v. Olano, 507 U.S. 725, 734 (1993 . Be au e here i no a u ory au hori y o ex en he re i u ion require ne, he error ne e arily) hange he ou o of he i ri our pro ee ing an affe e Mr. Ge e ' ub an ial righ . See i . Finally, re i u ion i ope wi hou a u ory au hori y) houl be orre e be au e i i beyon he re ye au horize ; hu , i eriou ly affe he fairne or in egri y of ju i ial pro ee ing . See i . Mr. Ge e ha a i fie he plain error an ar an he govern n e oe no on en o herwi e. Therefore, we rever e he i opi ion of re i u ion o he ex en i wa or ere o be pai ou i e of upervi e relea e.

B. Whether the district court erred by adding conditions of supervised release to the written judgment that were not orally pronounced at the sentencing hearing.

1. Standard of review

The par ie i agree a o he an ar of review regar ing he 16 a i ional

condition o rvi d r l a . Th gov rnm ent gg t lain rror r vi w b ca Mr. G dd did not obj ct at nt ncing. A l . Br. at 14. Mr. G dd arg or ab o di cr tion r vi w incl ding d novo r vi w o l gal concl ion . , A lt. Br. at 24–25. Wh n a d ndant ha no ad q at o ort nity to obj ct at th nt ncing h aring condition o rvi d r l a ar r vi w d or ab o di cr tion. Unit d Stat v. Br l y 15 F.4th 1279 1286 (10th Cir. 2021). Thi incl d l nary r vi w o wh th r th oral nt nc and writt n j dgm ent con lict. Id. Th w con id r wh th r Mr. G dd wa noti i d o th condition b ing im po d at nt ncing and had an ad q at o ort nity to obj ct. S Unit d Stat v. Diggl 957 F.3d 551 559 (5th Cir. 2020) (n banc) c rt. d ni d 141 S.Ct. 825 (2020).

Thi in t rn r q ir con id ration o th vario ty o condition o rvi d r l a . Titl 18 U.S.C. § 3583(d) divid th m into two cat gori : mandatory and di cr tionary. Th nt ncing g id lin cat goriz th m a mandatory tandard cial and additional cial. U.S.S.G. § 5D1.3. Th mandatory condition in th nt ncing g id lin ar mat rially th am ea th mandatory condition in § 3583. Th g id lin ' " tandard " " cial " and "additional" cial condition ar orm so di cr tionary condition nd r § 3583(d). U.S.S.G. § 5D1.3; Diggl 957 F.3d at 559 & n.4; Unit d Stat v. Rog r 961 F.3d 291 297 (4th Cir. 2020). Th di r nc b tw n th gro in th g id lin i that tandard condition ar r commend d in v ry ca whil cial and additional cial condition ar r commend d or c rtain ca . U.S.S.G. § 5D1.3. S ction ,

3583(d) s s d scre on r cond ons m a onl be mposed f e re "re son bl rel ed" o some of e § 3553( ) sen enc ng f c ors, nvolve no gre er depr v on of l ber n s re son bl necess r , nd re cons s en w e Sen enc ng ommiss on's pol c s emen s. Here, e n ne spec l cond ons re unc llenged.[2]

Turn ng o e cond ons mposed on Mr. Geddes, e wo m and or cond ons ssue were con ned n e PSR. Bec use e cond ons re m and or , "[ ] follows e defend n s no ce, v s u e, e w ll be subjec o ose cond ons s m a er of l w." Rogers, 961 F.3d 297. T e d s r c cour conf rmed sen enc ng Mr. Geddes nd s s ndb counsel d rev ewedC e PSR. Mr. Geddes us d cons ruc ve no ce roug e s u e's m and e nd c u l no ce from e PSR ese cond ons would ppl . Bu , bec use e PSR s no e sen ence, see Un ed S es v. V ll no, 816 F.2d 1448, 1451 (10 r. 1987) (en b nc), nd e d s r c cour d d no purpor o dop e PSR or o erw se dop n full e s u or m and or cond ons sen enc ng, s close ques on s o w e er Mr. Geddes d n oppor un o objec sen enc ng desp e v ng no ce. See D ggles, 957 F.3d 561 & n.7 ("[I]n-cour dop on of ose cond ons

[2] As d scussed n no e 1, e consen o se rc cond on s l s ed s spec l b e gu del nes nd s nd rd on e D s r c of U 's prob on off ce webs e. As spec l cond on m a requ re fur er expl n on for s mpos on. Un ed S es v. Benv e, 18 F.4 665, 671 (10 r. 2021). Even g v ng e governmen e benef of e doub nd erm ng "s nd rd" le s n e D s r c of U , s s ll d scre on r cond on nd we ev lu e s p r of e group of d scre on r cond ons.

is when he e en n n obje .”); Rogers, 961 F.3 295. Be se he o ome wo l be he s me n er ei her he pl in error or b se o is re ion s n r o review, we will ss me or p rposes o ppe l h he b se o is re ion s n r pplies. C . Br ley, 15 F.4 h 1286.

For he 14 is re ion ry on i ions, Mr. Ge es i no h ve no i e or n eq e oppor ni y o obje . The PSR only s e h Mr. Ge es “sh ll omply wi h he s n r on i ions o s pervision s op e by his Co r .” V R. 25. Unlike he m an ory on i ions, he PSR i no lis he s n r on i ions wi h spe i i i y. An he o r m a e no re eren e sen en ing o op ing ei her: (1) he s n r on i ions s lis e in he sen en ing g i elines or s lis e in he Dis ri o U h; or (2) he PSR. There w s no hing o in i e h Mr. Ge es sho l h ve obje e . See Rogers, 961 F.3 295 (“[N]o hing o u rre sen en ing h wo l h ve ler e [he e en n] o he possibili y h his wri en j gmen migh in l e [hose] nmen ione on i ions.” (emph sis e)).

Al ho gh his ir i oes no req ire o r s o m ke spe i i in ings be ore imposing s n r on i ions, “[i]n some ir ms n es, he p r ies’ obje ions [o s n r on i ions] m y j s i y mo i i ion o voi n er in y over on i ion’s re h or o i he p r i l r ir ms n es.” Uni e S es v. M ñoz, 812 F.3 809, 824 n.17 (10 h Cir. 2015). Th s, even ho gh hey re “s n r ,” he s n r on i ions re only “re ommen e ” n no inevi bly j s i ie in every se. The o r oes no h ve o op hem. As or he s gges ion h e en n h s responsibili y o obje o on i ions no lis e in he PSR, no or lly impose , n

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not re re n e ery case, we reject t.[3]

Therefore, we w ll re ew the mpos t on of the two man atory an 14 scret onary con t ons n the wr tten j gment for ab se of scret on. str ct A co rt ab ses ts scret on "when a r l ng s base on a clearly erroneo s f n ng of fact, an erroneo s concl s on of law, or a clear error of j gment." Muñoz, 812 F.3 at 817. " n error of law s per se an ab se of scret on." Un te States . Ell s, 23 F.4th 1228, 1238 (10th C r. 2022) (ot ng Un te States . Lopez- la, 665 F.3 1216, 1219 (10th C r. 2011)).

2. Merits

Sentenc ng n a cr m inal case affects f n amental h man r ghts of l fe an l berty. V llano, 816 F.2 at 1452. The sentenc ng j ge m st anno nce the sentence s ch that the efen ant s aware of the sentence when lea ng the co rtroom. I . at 1452–53. The PSR s not the sentence — "[t]he sentence orally prono nce from the bench s the sentence." I . at 1451. Tho gh the r ght s not absol te, a efen ant has a const t t onal r ght to be present at the mpos t on of h s

[3] The go ernment arg es that some of o r pr or caselaw mpl es that ex stence of scret onary or stan ar con t ons n the sentenc ng g el nes an the D str ct of Utah pro es constr ct e not ce. plee. Br. at 15–16 (c t ng Un te States . Barajas, 331 F.3 1141, 1144–45 (10th C r. 2003)). Barajas a resses not ce n the context of a str ct co rt's mpos t on of a new con t on r ng sentenc ng tself that was not n the PSR, an a efen ant's fa l re to object orally. Here, Mr. Ge es alleges the error occ rre when the str ct co rt a e con t ons to the wr tten j gment, not r ng sentenc ng. Unl ke Barajas, here Mr. Ge es ha no opport n ty to object at sentenc ng, regar less of whether he ha not ce of the poss b l ty f rther con t ons may be mpose , beca se the str ct co rt not anno nce any of these scret onary con t ons at sentenc ng.

or her sen en e n s herefore "presen only when be ng sen en e from he ben h." I . 1452 (ng Fe . R. r m. P. 43( )).

If wr en ju gmen n or lly pronoun e sen en e onfl , "[ ] s f rmly C es bl she n se le pr n ple of fe er l r m in l l w h n or lly pronoun e sen en e on rols." I . 1450. The wr en ju gmen n be use o prov e l r y o he sen en e only f he or l sen en e s mb guous. Un e S es v. B rw g, 568 F.3 852, 855 (10 h r. 2009). "[Ten h r u] jur spru en e le ves no sp e for un s lose n unspoken ju l n en " n efen n s en le o rely on sen en ng ju ge's un mb guous wor s. I . 856–58.

To e erm ine whe her he or lly pronoun e sen en e s mb guous, our s " ons er only he wor s use by he sen en ng our n form ally pronoun ng sen en e." B rw g, 568 F.3 856. Amb gu y n lu es, bu s no l m ie o, "(1) when he wor s use h ve more h n one me n ng; (2) when o herw se un mb guous wor s re use n n unusu l w y; (3) he ex en of he sen en e nno be s er ne from he l ngu ge use ; or (4) he pl n me n ng of he wor s use le o n rr on l or bsur resul ." V ll no, 816 F.2 1453 n.6. None of hese r ums n es re presen here. The ssue s whe her s len e ons u es mb gu y.

V ll no no bly no ress whe her s len e s n ex mple of mb gu y. 816 F.2 1454 (McK y, J., on urr ng) (no ng h s om iss on); . 1458 (Log n, J., on urr ng) (s me); . 1460 (An erson, J., on urr ng) (s me). In Bruley, he C s r our ol he efen n o f m il r ze h mself "w h ll he spe l erms" f er revok ng h s f rs superv se rele se n mpos ng new erm f er per o of C

impris me 15 F 4 h a 1286–87 I ha c x , h c ur f u d wi h r sp c sp cial c di i s f sup r is d r l as , wh h c di i is a r imp si i f f which h d f da was alr ady awar , sil c is m or lik ly c s i u v ambigui y; bu if h c di i is imp s d i h wri judgm e f r h firs im e, i is m or lik ly c s i u a c flic a d h ral pr isi will c r l Brul y, 15 F 4 h a 1286–87

We w ur h discr i ary a d ma da ry c di i s d rmi wh h r i his cas , h dis ric c ur 's sil c duri g s ci g cr a d a c flic r was m er ly ambigu us

a. Discretionary conditions

"As c mmo plac a d s sibl as h s [discr i ary] c di i s may b acr ss f d ral s c s, C gr ss has ma da d h ir imp si i " U i d S a s A s ic , 930 F 3d 907, 910 (7 h Cir 2019) F r purp s s f wh h r h c di i s mus b rally pr u c d, h r l a dis i c i is b w c di i s ma da d by h g r i g s a u a d h s which ar discr i ary, if h s ci g guid li s fur h r subca g riz h m as s a dard S U i d S a s Ma h ws, 54 F 4 h 1, 6 (D C Cir 2022); R g rs, 961 F 3d a 299; Diggl s, 957 F 3d a 559 & 4 S c i 3583 r quir s dis ric c ur s x rcis discr i a d mak a i di idualiz d ass ssm e f r all discr i ary c di i s, as d s h s ci g guid li s 18 U S C § 3583(d); s U S S G § 5D1 3(b)–(c); Ma h ws, 54 F 4 h a 6 Thus, c di i s which ar discr i ary u d r h s a u ca b d m ed implici i ry rm f sup r is d r l as We h ld ha dis ric c ur s mus rally

pronoun r t onary on t on la f a tan ar by th nt n ng gu l n at nt n ng.

In r a h ng th on lu on, w jo n th D.C., Fourth, F fth, an S v nth m C r u t wh h hav a h h l that all r t onary on t on tub orally pronoun . S Matth w , 54 F.4th at 6; Rog r , 961 F.3 at 294; D ggl , 957 F.3 at 559; An t , 930 F.3 at 910.[4] We lar fy that th hol ng o not r qu r th tr t ourt to r t v rbat a h on t on. Wh l that on opt on, f th on t on ar wr tt n out n a van an th f n ant ha r v w th u h a f th y ar fully wr tt n n th PSR or anoth r o u nt, th tr t ourt y a n orporat th by r f r n or y a ly p ay that t opng th tan ar on t on . S Matth w , 54 F.4th at 6 n.2; D ggl , 957 F.3 at 560–62; Rog r , 961 F.3 at 299. Shoul th tr t ourt not r f r n th r t onary on t on t b l v houl apply to a f n ant' up rv on, t th gov rn nt' r pon b l ty to obj t. A long a th nt n ng ourt not f th f n ant n- ourt of th on t on b ng op an allow an opportun ty for th f n ant to obj t, th wr tt n ju g nt y a t tho on t on w thout r at ng a onfl t.

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[4] We a knowl g an l n to follow th S on C r u t' hol ng n Un t Stat v. Tru llo that tan ar on t on o not n to b orally op b au th y ar l p t n th natur of up rv m r l a . 168 F.3 61, 62–64 (2 C r. 1999). Notably, th F fth C r u t n t ally follow Tru llo, but n 2020 lar f that r t onary on t on o n to b orally pronoun n n ban r v w. D ggl , 957 F.3 551. Th N nth C r u t al o follow Tru llo n Un t Stat v. Nap r, 463 F.3 1040, 1043 (9th C r. 2006), but ha now grant n ban r v w to r on r th u n Un t Stat v. Montoya, 48 F.4th 1028, (9th C r.), r h'g grant an op n on va at by 54 F.4th 1168 (9th C r. 2022).

See Digg e 7 F.3d at 63.

Here upon review of the word u ed y the di trict court at entencing ee Barwig 68 F.3d at 8 6 the court aid nothing a out other condition that may app y. "A defendant mu t e entit ed to re y on a judge' unam iguou word ." Barwig 68 F.3d at 8 8. Our ca e aw reject undi c o ed and un poken judicia intent. Id. at 8 6– 7. A one- entence reference in the PSR to the tandard condition with no incorporation of the PSR or mention of " tandard" condition in-court during entencing i in ufficient to impo e the e condition . See Vi ano 816 F.2d at 14 2. A de cri ed a ove a defendant ha a right to e pre ent at the impo ition of hi entence. Id. Mr. Gedde wa not aware of hi entence when he eft the courtroom.

There i nothing in the di trict court' word that can e con trued a am iguou — the di trict court imp y did not incorporate or impo e any tandard condition of upervi ed re ea e. See Roger 61 F.3d at 2 –300. Becau e Mr. Gedde wa entenced to upervi ed re ea e with no mention of " tandard condition " that wou d app y there i a conf ict etween hi ora entence and the written judgment. Thi i con i tent with Bru ey which whi e on y addre ing pecia condition found that adding previou y unmentioned condition in the written judgment create conf ict rather than am iguity. Cf. Bru ey 1 F.4th at 1287. We re o ve that conf ict with the we -e ta i hed ru e that the ora entence contro . Therefore the di trict court committed an error of aw and a u ed it di cretion y

adding 1 di tiona y ondition of up vi d l a to th w itt n judgm ent.[5]

b. Man atory con itions

We tu n to th impo ition of th two mandato y ondition : p ohibition on ommitting anoth im eand on po ing a ont oll d ub tan . S An ti , 930 F.3d at 909. R ga dl of it po ition on wh th di tiona y ondition mu t b o ally p onoun d, v y i uit to on id th i u ha found that mandato y ondition of up vi d l a n d not b p onoun d. S Matth w , 5 F. th at 5; Rog , 961 F.3d at 296–97; Diggl , 957 F.3d at 557; An ti , 930 F.3d at 909; Unit d Stat v. Wa hington, 90 F.3d 20 , 208 (2d Ci . 2018); al o Unit d Stat v. D ap au, 6 F.3d 6 6, 656 (8th Ci . 2011); Unit d Stat v. V ga-O tiz, 25 F.3d 20, 22–23 (1 t Ci . 2005); Unit d Stat v. Napi , 63 F.3d 10 0, 10 3 (9th Ci . 2006); Unit d Stat v. Montoya, 8 F. th 1028 (9th Ci .) (Fo t, J., on u ing), h'g g ant d and opinion va at d by 5 F. th 1168 (9th Ci . 2022).

Th wa no o o abu of di tion in impo ing th two ondition in th w itt n judgm ent v n though th y w not o ally p onoun d. A di u d p viou ly, Mr. G dd had noti h would b ubj t to th two ondition b au th y app a in § 3538(d). S An ti , 930 F.3d at 909. Th y w al o li t d in th PSR, whi h th di t i t judg onfi m ed at nt n ing that Mr. G dd and hi tandby oun l had vi w d. S id. Mandato y ondition lik th do

[5] In hi final i u on app al, Mr. G dd ub tantiv ly hall ng th i k notifi ation to thi d pa ti ondition. Thi ondition wa on of th 1 di tiona y ondition not impo d o ally. Thu , w n d not add th a gum ent b au w hold th ondition wa not impo d upon him.

not cr t con ct b c us th d str ct court h s no d scr t on to om it th m. Rog rs, 961 F.3d t 296–97.[6] Any ob ct on to th s two cond t ons wou d b ut . S D gg s, 957 F.3d t 559. Or pronounc m ent, th n, do s not g v th s m e "opportun ty to d nd" g nst th s two cond t ons th t th pronounc m ent o d scr t on ry cond t ons do s. Rog rs, 961 F.3d t 296–97. Un k th d scr t on ry cond t ons, th s two cond t ons n § 3583(d) "must b p rt o ny t rm o sup rv s d r s ." Anst c , 930 F.3d t 909 (mph s s dd d).[7] A though w nd th s two m and tory cond t ons r "v d compon nts" o Mr. G dd s' sj nt nc , t r m ans b st pr ct c to mpos cond t ons o sup rv s d r s t s nt nc ng. Rog rs, 961 F.3d t 296–97.

3. Scope of remedy

T nth C rcu t c s w h s cons st nt y h d "un qu voc [y] th t ' n or y pronounc d s nt nc contro s ov r udgm ent nd commitm ent ord r wh n th two con ct.'" Un t d St t s v. Bow n, 527 F.3d 1065, 1080 (10th C r. 2008) (quot ng

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[6] In r p y nd t or rgum ent, Mr. G dd s r s d th ssu pr s nt d n Gr n w v. Un t d St t s, 554 U.S. 237 (2008). Th t c s out n d th pr nc p th t " n pp t court m ay not t r udgm ent to b n t non pp ng p rty." Id. t 244. Th r , th court o pp s su spont r s d th d nd nt's s nt nc to m e t th m and tory m in mum t r th d nd nt w s s nt nc d b ow th t v , w thout cross- pp rom th gov rnm ent sk ng to r s th s nt nc . Id. t 242–43.

H r , th gov rnm ent d d not cross- pp r g rd ng th m and tory cond t ons, nor w s th r ny n d. As rgu d n ts r spons br , th r w s no rror nd th m and tory cond t ons w r prop r y mpos d n th wr tt n udgm ent. Ap . Br. t 19–20. Upho d ng th mpos t on o th two m and tory cond t ons n no w y t rs th s nt nc to th b n t o th non pp ng p rty.

[7] Th two m and tory cond t ons t ssu h r un qu voc y v no room or d scr t on.

United States v. Allo-Zarate, 986 F.2d 378, 379 (10th Cir. 1993). Without ambiguity in when there is conflict between the oral sentence in the written judgment, "the sentence, orally pronounced, shall not be altered." Villano, 816 F.2d at 1453. Because there is conflict between the oral sentence in written judgment, the proper remedy is remand for the district court to conform the written judgment to the oral sentence. See id.

We note that Mr. Gee remains subject to the nine unchallenged special conditions of supervised release in will also be subject to the statutory mandatory conditions. We also clarify that this holding does not affect district court's ability under 18 U.S.C. § 3583(e) to modify the conditions of supervised release pursuant to the Federal Rules of Criminal Procedure.

Conclusion

We REVERSE the district court's imposition of restitution to the extent it was ordered to be paid outside the term of supervised release in REMAND for the court to modify the written judgment in manner consistent with this opinion. We AFFIRM the district court's imposition of the mandatory conditions of supervised release in the written judgment in REVERSE the imposition of the discretionary conditions of supervised release. We REMAND for the district court to conform the written judgment to what was orally pronounced in manner consistent with this opinion.