

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-1539

United States of America,

Appellee,

v.

Toby Edward Carter,

Appellant.

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Appeal from the United States
District Court for the Western
District of Arkansas.

[UNPUBLISHED]

Submitted: July 26, 2004

Filed: July 28, 2004

Before MURPHY, FAGG, and SMITH, Circuit Judges.

PER CURIAM.

Toby Edward Carter appeals the sentence the district court* imposed after revoking Carter's supervised release. The district court sentenced Carter to 7 months in prison, followed by a 28-day residential substance-abuse-treatment program, and then 24 months additional supervised release. For the first time on appeal, Carter argues the district court was not authorized to impose the additional supervised release because 18 U.S.C. § 3583(h) was enacted after he committed the offenses underlying his original conviction. We conclude the district court did not commit

*The Honorable Robert T. Dawson, United States District Judge for the Western District of Arkansas.

plain error in ordering supervised release because while section 3583(h) does not apply retroactively to Carter's case, at the time of his offense 18 U.S.C. § 3583(e)(3) authorized the court to impose the challenged sentence. See Johnson v. United States, 529 U.S. 694, 702, 713 (2000). We thus affirm the judgment of the district court, and we also grant counsel's motion to withdraw.
