

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

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4 SUMMARY ORDER

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6 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL
7 REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS
8 OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS
9 OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A
10 RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL
11 OR RES JUDICATA.

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13 At a stated term of the United States Court of Appeals for the Second Circuit, held at the United
14 States Courthouse, Foley Square, in the City of New York, on the 30th day of September, two
15 thousand and four.

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17 PRESENT:

18 HON. WILFRED FEINBERG
19 HON. RICHARD J. CARDAMONE
20 HON. BARRINGTON D. PARKER, JR.,
21 *Circuit Judges,*

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25 United States of America
26 *Appellee*

27 v.

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31 Kim De Los Santos-Ferrer
32 *Defendant-Appellant*

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SUMMARY ORDER
No. 04-0918-cr

36 COUNSEL FOR APPELLEE: ROSLYNN R. MAUSKOPF, U.S. Attorney, Eastern
37 District of New York, EMILY BERGER, CARRIE
38 CAPWELL, Assistant U.S. Attorneys, of counsel.
39 COUNSEL FOR DEFENDANT-APPELLANT: PAUL M. GAMBLE, New York, NY

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41 Appeal from a judgment of the United States District Court for the Eastern District of New York
42 (Block, *J.*)

1 ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND
2 DECREED that the judgment of the District Court be and it hereby is AFFIRMED.

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4 Defendant-Appellant Kim De Los Santos-Ferrer appeals from the entry of a Violation of
5 Supervised Release Order by the United States District Court for the Eastern District of New
6 York (Block, *J.*). Following an evidentiary hearing before a Magistrate Judge (Pollack, *M.J.*), the
7 Court concluded that Santos-Ferrer had violated the terms of his supervised release, which had
8 been imposed as a consequence of a prior narcotics conviction, by *inter alia* engaging in
9 additional narcotics transactions. At the hearing the evidence against him was adduced largely
10 through testimony of DEA Special Agent James Lasota. Coded conversations in which Santos-
11 Ferrer participated had been intercepted by authorities and Lasota offered testimony that the
12 conversations referred to drug transactions. Following the hearing, the Court, based primarily on
13 the Magistrate’s report, terminated Santos-Ferrer’s supervised release and sentenced him
14 principally to a year and a day. Familiarity with the relevant facts, procedural history and issues
15 presented raised on appeal is presumed.

16 Santos-Ferrer claims that the Magistrate Judge and the District Court erred in admitting
17 Special Agent Lasota’s testimony, because “despite the latitude given District Courts [in hearing
18 expert testimony concerning the narcotics trade] the cases ... caution against the admission of
19 expert testimony that strays from a witness’ expertise.” Appellant br. at 21. Specifically, he
20 contends that the District Court abused its discretion in admitting the testimony because blurring
21 the distinction between expert and lay testimony created a risk of confusing the trier of fact.

22 We see no error, much less any abuse of discretion. It is well-settled that revocation
23 hearings are not the same as criminal trials and judicial officers have considerable discretion at

1 such hearings in determining the testimony to admit and the manner in which it may be given.
2 The full range of procedural safeguards associated with a criminal trial do not attach to parole
3 revocation proceedings because “a probationer already stands convicted of a crime.” *United*
4 *States v. Jones*, 299 F.3d 103, 109 (2d Cir. 2002).

5 Moreover, the Federal Rules of Evidence do not apply to supervised release revocation
6 hearings. *See* Fed. R. Evid. 1101(d)(3) (federal rules of evidence not applicable to proceedings
7 “granting or revoking probation”); Fed. R. Crim. P. 32.1(a)(2) advisory committee’s notes (2003
8 ed.) (“The hearing required by Rule 32.1(a)(2) is not a formal trial; the usual rules of evidence
9 need not be applied.”). Consequently, Santos-Ferrer’s objections to the admission of Special
10 Agent Lasota’s testimony are simply misplaced. We have reviewed his other contentions and
11 find them to be without merit.

12 Accordingly, the judgment of the District Court is hereby affirmed.

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14 FOR THE COURT:
15 Roseann B. MacKechnie, Clerk
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17 By: _____
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