

APPENDIX A

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UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-4487

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DONOVAN LETRELL HALL,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Elizabeth City. Terrence W. Boyle, District Judge. (2:16-cr-00020-BO-1)

Submitted: February 20, 2018

Decided: February 28, 2018

Before GREGORY, Chief Judge, and DUNCAN and THACKER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Louis C. Allen, Acting Federal Public Defender, Jaclyn L. DiLauro, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Raleigh, North Carolina, for Appellant. Robert J. Higdon, Jr., United States Attorney, Jennifer P. May-Parker, Kristine L. Fritz, Assistant United States Attorneys, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

Donovan Letrell Hall appeals following his guilty plea to being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924 (2012), and the imposition of a 110-month downward variant sentence. Hall challenges both the procedural and substantive reasonableness of his sentence and contends that the Government violated the constitutional prohibition on double jeopardy by prosecuting him after he was prosecuted for the same conduct in state court. We reject these arguments and affirm the criminal judgment.

Turning first to Hall's double jeopardy claim, because Hall did not raise this argument in the district court, our review is limited only to plain error. *See United States v. Jackson*, 706 F.3d 264, 270 n.2 (4th Cir. 2013) (reviewing unpreserved Fifth Amendment double jeopardy challenge for plain error under *United States v. Olano*, 507 U.S. 725, 732-36 (1993)); *United States v. Higgs*, 353 F.3d 281, 324 (4th Cir. 2003) (reviewing constitutional claim that was not raised below for plain error). The protection against double jeopardy "prohibits the government from subjecting a person to multiple punishments for the same offense." *United States v. Schnittker*, 807 F.3d 77, 81 (4th Cir. 2015) (internal quotation marks omitted). However, under the dual sovereignty doctrine, "the Supreme Court has continually held that federal and state crimes are not the same offense, no matter how identical the conduct they proscribe." *United States v. Alvarado*, 440 F.3d 191, 196 (4th Cir. 2006) (internal quotation marks omitted); *see Abbate v. United States*, 359 U.S. 187, 194-96 (1959) (declining to overrule established principle

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“that a federal prosecution is not barred by a prior state prosecution of the same person for the same acts”).

While Hall is correct in that there are several certiorari petitions that raise this issue currently pending before the Supreme Court, *see, e.g., Gamble v. United States*, No. 17-646 (docketed Nov. 2, 2017); *Ochoa v. United States*, No. 17-5503 (docketed Aug. 4, 2017), the Court has not granted certiorari in these cases. Thus, as Hall readily concedes, *Abbate* remains good law, and we reject this argument on that basis.

We next consider Hall’s sentencing arguments. We review every federal sentence for reasonableness, employing an abuse of discretion standard. *United States v. Lymas*, 781 F.3d 106, 111 (4th Cir. 2015). Reasonableness review first requires that we consider whether the district court committed a significant procedural error, such as failing to consider the 18 U.S.C. § 3553(a) (2012) factors or failing to adequately explain the chosen sentence. *Gall v. United States*, 552 U.S. 38, 51 (2007). Hall first challenges the procedural reasonableness of his sentence, focusing on the district court’s analytical process and explanation for the selected sentence.

When rendering a sentence, the district court must make and place on the record an individualized assessment based on the particular facts of the case. *United States v. Carter*, 564 F.3d 325, 328, 330 (4th Cir. 2009). While the sentencing court must state in open court the specific bases for the selected sentence, the court’s explanation “need not be exhaustive.” *United States v. Avila*, 770 F.3d 1100, 1107 (4th Cir. 2014); *see also United States v. Johnson*, 445 F.3d 339, 345 (4th Cir. 2006) (court need not explicitly reference § 3553(a) or discuss every factor on the record). The court’s explanation must

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be sufficient “to satisfy the appellate court that [it] has considered the parties’ arguments and has a reasoned basis for exercising [its] own legal decisionmaking authority.” *Rita v. United States*, 551 U.S. 338, 356 (2007).

“Where the defendant or prosecutor presents nonfrivolous reasons for imposing a different sentence than that set forth in the advisory Guidelines, a district judge should address the party’s arguments and explain why he has rejected those arguments.” *United States v. Bollinger*, 798 F.3d 201, 220 (4th Cir. 2015) (internal quotation marks omitted). Although it is sometimes possible to discern a sentencing court’s rationale from the context surrounding its decision, *United States v. Montes-Pineda*, 445 F.3d 375, 381 (4th Cir. 2006), “an appellate court may not guess at the district court’s rationale, searching the record for statements by the Government or defense counsel or for any other clues that might explain a sentence[,]” *Carter*, 564 F.3d at 329-30. An insufficient explanation of the sentence imposed constitutes significant procedural error by the district court. *United States v. Lynn*, 592 F.3d 572, 576 (4th Cir. 2010).

Where, as here, the defendant preserved the issue of whether the explanation was adequate by arguing for a sentence different than that which was imposed, we review the issue for abuse of discretion. *Id.* If we find such abuse, we must reverse unless we conclude that the error was harmless. *Id.* The Government bears the burden of showing “that the error did not have a substantial and injurious effect or influence on the result and we can say with fair assurance that the district court’s explicit consideration of the defendant’s arguments would not have affected the sentence imposed.” *United States v.*

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Boulware, 604 F.3d 832, 838 (4th Cir. 2010) (alterations and internal quotation marks omitted).

Hall does not contest the computation of his Guidelines range, which was then reduced to the applicable 10-year statutory maximum. He does contend, however, that the district court procedurally erred in failing to explain either why it declined to award a downward departure based on U.S. Sentencing Guidelines Manual § 5K2.23, p.s. (2016), or the reasons for the chosen sentence.

The first prong of this argument stalls out of the gate. Defense counsel did not specifically ask the district court at sentencing to grant a downward departure under USSG § 5K2.23, p.s., which permits—but does not require—the sentencing court to depart downward from the defendant’s Guidelines range for a completed term of imprisonment for another offense that would constitute relevant conduct to the instant offense. The record makes plain that defense counsel instead framed her argument in terms of a downward variance. By the same token, nothing in the record suggests that the district court was unaware of its authority to depart downward on this basis. Because “[w]e lack the authority to review a sentencing court’s denial of a downward departure unless the court failed to understand its authority to do so[.]” *United States v. Brewer*, 520 F.3d 367, 371 (4th Cir. 2008), we agree with the Government that Hall’s challenge to the procedural reasonableness of the sentence “is better suited as one to the general explanation of the sentence, not the explanation of a particular departure ruling.” (Appellee’s Br. (ECF No. 26) at 20).

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On review, we conclude that the court's statements prior to announcing sentence demonstrate that Hall's individualized circumstances informed the court's decision to grant a 10-month downward variance from the 120-month statutory maximum. Indeed, the record makes plain the court's view that a long sentence was appropriate mostly because of Hall's extensive criminal background, which had been punished previously with light sentences and probationary terms. This is consistent with two of the main purposes identified in 18 U.S.C. § 3553(a)(2)—to protect the public from future crimes by Hall and to specifically deter Hall from continuing to engage in crime. Moreover, the record establishes that a focal point at sentencing was Hall's contention that his federal sentence should be reduced, at minimum, in consideration of the state sentence he had served. The district court actively engaged both attorneys on this topic and ultimately acceded to defense counsel's request for such a reduction—even if not to the full extent sought. The sentencing transcript demonstrates that the judge considered Hall's individual characteristics and history, as well as the circumstances of this offense, *see* 18 U.S.C. § 3553(a)(1), in fashioning its sentence, *see Rita*, 551 U.S. at 357-59.

Even if we were to find procedural error in the district court's explanation, *see United States v. Blue*, 877 F.3d 513, 519-21 (4th Cir. 2017) (vacating sentence and remanding for resentencing when the record did not provide adequate “contextual support” to discern the sentencing court's reasons for rejecting defendant's arguments for a downward departure), we accept the Government's alternative contention that such an error is harmless, *see Boulware*, 604 F.3d at 839-40. The court considered—and, ultimately, mostly accepted—Hall's argument for a sentence below the statutory

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maximum, which was based on the following facts: (1) that Hall's conviction arose from a guilty plea as opposed to after trial; (2) that Hall accepted responsibility and apologized to the arresting officer; (3) that Hall wanted to change his life for the better; and (4) that the same conduct formed the basis for Hall's state conviction. While it initially resisted defense counsel's arguments, the court eventually retreated from its position that it should impose the statutory maximum 120-month sentence and awarded a 10-month downward variance. Accordingly, even if there was a deficit in the court's explanation, we alternatively hold that the Government has established that such an error is harmless.

Finally, then, we address Hall's challenge to the substantive reasonableness of his sentence. *Gall*, 552 U.S. at 51. Of course, we presume that a sentence within or below a properly calculated Guidelines range is substantively reasonable. *United States v. Susi*, 674 F.3d 278, 289 (4th Cir. 2012); *see Blue*, 877 F.3d at 519-20. "Such a presumption can only be rebutted by showing that the sentence is unreasonable when measured against the 18 U.S.C. § 3553(a) factors." *United States v. Louthian*, 756 F.3d 295, 306 (4th Cir. 2014).

To undermine the presumption of reasonableness that attaches to the below-Guidelines sentence he received, Hall relies on the same core reasons advanced to demonstrate procedural error. But these arguments invite us to reweigh the § 3553(a) factors and the relevant circumstances in this case, which we will not do. *See United States v. Jeffery*, 631 F.3d 669, 679 (4th Cir. 2011) (recognizing that "district courts have extremely broad discretion when determining the weight to be given each of the § 3553(a) factors"). On this record, we cannot say that the district court abused its

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discretion in giving controlling weight to the need to protect the public from Hall's unrelenting criminal conduct, Hall's extensive criminal history—which carries with it an increased likelihood of recidivism—and the seriousness of the underlying offense, which likewise was a focal point at sentencing. *See* 18 U.S.C. § 3553(a)(1)-(2). Accordingly, we hold that Hall has failed to overcome the presumption of substantive reasonableness afforded the below-Guidelines sentence he received.

For these reasons, we affirm the criminal judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

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FILED: February 28, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4487
(2:16-cr-00020-BO-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DONOVAN LETRELL HALL

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA

v.

Donovan Letrell Hall

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:16-CR-20-1BO

USM Number: 63082-056

Halerie F. Mahan

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

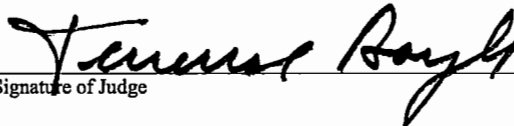
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 922(g)(1), 18 U.S.C. § 924(a)(2)	Possession of a Firearm by a Convicted Felon.	September 25, 2015	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

7/18/2017

Date of Imposition of Judgment



Signature of Judge

Terrence W. Boyle, US District Judge

Name and Title of Judge

7/18/2017

Date

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DEFENDANT: Donovan Letrell Hall
CASE NUMBER: 2:16-CR-20-1BO

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Count 1 - 110 months

The defendant shall receive credit for time served while in federal custody.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the defendant NOT BE incarcerated in NC, SC, VA for West VA

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

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DEFENDANT: Donovan Letrell Hall
CASE NUMBER: 2:16-CR-20-1BO

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: Count 1 - 3 years

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Donovan Letrell Hall
CASE NUMBER: 2:16-CR-20-1BO**STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: Donovan Letrell Hall
CASE NUMBER: 2:16-CR-20-1BO

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

The defendant shall not incur new credit charges or open additional lines of credit without approval of the probation office.

The defendant shall provide the probation office with access to any requested financial information.

The defendant shall consent to a warrantless search by a United States Probation Officer or, at the request of the probation officer, any other law enforcement officer, of the defendant's person and premises, including any vehicle, to determine compliance with the conditions of this judgment.

The defendant shall support the defendant's dependents, if any, and meet other family responsibilities.

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DEFENDANT: Donovan Letrell Hall

CASE NUMBER: 2:16-CR-20-1BO

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$	\$

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$	<u>0.00</u>	\$	<u>0.00</u>
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- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Donovan Letrell Hall
CASE NUMBER: 2:16-CR-20-1BO**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☐ Lump sum payment of \$ _____ due immediately, balance due
- ☐ not later than _____, or
- ☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

Payment of the special assessment shall be due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐
- Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
Order for Forfeiture of Property entered on 7/18/2017.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTa assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

STATE OF NORTH CAROLINA

PASQUOTANK

County

ELIZABETH CITY

Seat of Court

File No.

15CRS051241

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NOTE: [This form is to be used for (1) felony offense(s) and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-342 for DWI offense(s).]

In The General Court Of Justice

☐ District ☒ Superior Court Division

STATE VERSUS

JUDGMENT AND COMMITMENT
ACTIVE PUNISHMENT - FELONY
(STRUCTURED SENTENCING)

(For Convictions On Or After Jan. 1, 2012)

G.S. 15A-1301, -1340.13

Name Of Defendant

HALL, DONOVAN, LETRELL

Race

B

Sex

M

Date Of Birth

09/06/1980

Attorney For State

KIMBERLY D PELLINI

☐ Def. Found
Not Indigent☐ Def. Waived
Attorney

Attorney For Defendant

ALICIA DAWN CASSIDY

☒ Appointed
☐ RetainedCrt Rptr Initials
AFThe defendant ☒ pled guilty (☐ pursuant to *Alford*) to ☐ was found guilty by the Court of ☐ was found guilty by a jury of ☐ pled no contest to

File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M	CL.	*Pun. CL.
15CRS051241	51	POSSESSION OF FIREARM BY FELON	09/26/2015	14-415.1	F	G	
14CRS000724	52	SELL/DELIVER MARIJUANA	01/06/2014	90-95(A)(1)	F	H	
15CRS051223	51	ASSAULT BY STRANGULATION	09/23/2015	14-32.4(B)	F	H	

*NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

The Court: ☒ 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 24.
Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission to this issue.
☐ 2. makes no prior record level finding because none is required for Class A felony, violent habitual felon, or drug trafficking offenses.

PRIOR
RECORD
LEVEL:

☐ I ☐ III ☐ V
☐ II ☐ IV ☒ VI

The Court (NOTE: Block 1 or 2 MUST be checked.):

- ☐ 1. makes no written findings because the term imposed is: ☐ (a) in the presumptive range. ☐ (b) for a Class A felony. ☐ (c) for adjudication as a violent habitual felon, G.S. 14-7.12. ☐ (d) for drug trafficking. ☐ for which the Court finds the defendant provided substantial assistance, G.S. 90-95(h)(5). ☐ (e) in the aggravated range, pursuant to G.S. 20-141.4(b)(1a).
- ☒ 2. finds ☒ the Determination of aggravating and mitigating factors on the attached AOC-CR-605. ☐ egregious aggravation under G.S. 14-27.2A or G.S. 14-27.4A, on the attached AOC-CR-618, which requires a sentence in excess of that authorized by G.S. 15A-1340.17.
- ☐ 3. adjudges the defendant to be a habitual felon to be sentenced ☐ (offenses committed on or after Dec. 1, 2011) as a Class C felon. ☐ (offenses committed on or after Dec. 1, 2011) four classes higher than the principal felony (no higher than Class C).
- ☐ 4. adjudges the defendant to be a habitual breaking and entering status offender, to be sentenced as a Class E felon.
- ☐ 5. adjudges the defendant to be an armed habitual felon to be sentenced as a Class C felon (unless sentenced herein as a Class A, B1, or B2 felon) and with a minimum term of imprisonment of no less than 120 months.
- ☐ 6. finds enhancement pursuant to: ☐ G.S. 90-95(e)(3) (drugs). ☐ G.S. 14-3(c) (hate crime). ☐ G.S. 50B-4.1 (domestic violence). ☐ G.S. 14-50.22 (gang). ☐ Other: _____ This finding is based on the jury's determination of this issue beyond a reasonable doubt or on the defendant's admission.
- ☐ 7. finds that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and actually possessed the firearm or weapon about his or her person. This finding is based on the jury's determination of this issue beyond a reasonable doubt or on the defendant's admission. Pursuant to G.S. 15A-1340.16A, the Court has increased the minimum sentence by (check only one)
☐ (Class A-E felony committed prior to Oct. 1, 2013) 60 months. ☐ (Class A-E felony committed on or after Oct. 1, 2013) 72 months.
☐ (Class F or G felony committed on or after Oct. 1, 2013) 36 months. ☐ (Class H or I felony committed on or after Oct. 1, 2013) 12 months.
- ☐ 8. finds the above-designated offense(s) is a reportable conviction under G.S. 14-208.6 (check only one)
☐ a. and therefore makes the additional findings and orders on the attached AOC-CR-615, Side One.
☐ b. but makes no finding or order concerning registration or satellite-based monitoring due to a sentence of life imprisonment without parole.
- ☐ 9. finds the above-designated offense(s) involved the ☐ physical or mental ☐ sexual abuse of a minor.
(NOTE: If offense(s) is not also a reportable conviction in No. 8 above, this finding requires no further action by the court.)
- ☐ 10. finds that a ☐ motor vehicle ☐ commercial motor vehicle was used in the commission of the offense and that it shall be reported to DMV.
- ☐ 11. finds this is an offense involving assault, communicating a threat, or an act defined by G.S. 50B-1(a), and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim.
- ☐ 12. (offenses committed on or after Dec. 1, 2008, only) finds the above-designated offense(s) involved criminal street gang activity. G.S. 14-50.25.
- ☐ 13. did not grant a conditional discharge under G.S. 90-96(a) because (check all that apply) ☐ the defendant refused to consent. ☐ (offenses committed on or after Dec. 1, 2013, only) the Court finds, with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense.
- ☐ 14. finds that the defendant used or displayed a firearm while committing the felony. G.S. 15A-1382.2.
- ☐ 15. (for judgments entered on or after Dec. 1, 2013, only) finds that this was an offense involving child abuse or an offense involving assault or any of the acts as defined in G.S. 50B-1(a) committed against a minor. G.S. 15A-1382.1(a1).

The Court, having considered evidence, arguments of counsel and statement of defendant, Orders that the above offenses, if more than one, be consolidated for judgment and the defendant be sentenced (check only one)

☐ to Life Imprisonment Without Parole for ☐ Class A Felony. ☐ Class B1 Felony.
☐ Violent Habitual Felon. ☐ G.S. 14-27.2A or G.S. 14-27.4A with egregious aggravation.

in the custody of:

☒ N.C. DAC.☐ to Life Imprisonment With Parole, pursuant to G.S. Chapter 15A, Article 81B, Part 2A.☐ Other: _____

for a minimum term of:

15

months

and a maximum term of:

27

months

☐ ASR term (Order No. 4, Side Two)☐ to Death (see attached Death Warrant and Certificate)The defendant shall be given credit for 31 days spent in confinement prior to the date of this Judgment as a result of this charge(s).☐ The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.☐ The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below.

File No.

Offense

County

Court

Date

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The Court further Orders: (check all that apply)

1. The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below.

Costs	Fine	Restitution*	Attorney's fees	SBM Fee	Appt Fee/Misc	Total Amount Due
\$ 1977.50	\$	\$ 0.00	\$ 140.00	\$ 0.00	\$ 60.00	\$ 2,177.50

*See attached "Restitution Worksheet, Notice and Order (Initial Sentencing)," AOC-CR-611, which is incorporated by reference.

- ☐ 2. The Court finds that restitution was recommended as part of the defendant's plea arrangement.
- ☐ 3. The Court finds just cause to waive costs, as ordered on the attached ☐ AOC-CR-618. ☐ Other: _____
- ☐ 4. Without objection by the State, the defendant shall be admitted to the Advanced Supervised Release (ASR) program. If the defendant completes the risk reduction incentives as identified by the Division of Adult Correction, then he or she will be released at the end of the ASR term specified on Side One. G.S. 15A-1340.18.

- ☒ 5. Other:
MONIES TO BE ENTERED AS A CIVIL JUDGMENT AGAINST THE DEFENDANT. AFTER A PERIOD OF 15 DAYS WEAPON TO BE DESTROYED AS PROVIDED BY LAW.

The Court recommends:

- ☐ 1. Substance abuse treatment. ☐ 2. Psychiatric and/or psychological counseling. ☒ 3. Work release ☒ should ☐ should not be granted.
- ☐ 4. Payment as a condition of post-release supervision or from work release earnings, if applicable, of the "Total Amount Due" set out above.
☐ but the Court does not recommend restitution be paid ☐ as a condition of post-release supervision. ☐ from work release earnings.

The Court further recommends:

ORDER OF COMMITMENT/APEAL ENTRIES

- ☒ 1. It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- ☐ 2. The defendant gives notice of appeal from the judgment of the trial court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

SIGNATURE OF JUDGE

Date	Name Of Presiding Judge (type or print)	Signature Of Presiding Judge
10/26/2015	THE HONORABLE KENNETH F CROW	<i>Kenneth F Crow</i>

ORDER OF COMMITMENT AFTER APEAL

Date Appeal Dismissed	Date Withdrawal Of Appeal Filed	Date Appellate Opinion Certified

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the agency named in this Judgment on the reverse and furnish that agency two certified copies of this Judgment and Commitment as authority for the commitment and detention of the defendant.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court

CERTIFICATION

I certify that this Judgment and Commitment with the attachment(s) marked below is a true and complete copy of the original which is on file in this case.

- | | |
|---|---|
| <input type="checkbox"/> Appellate Entries (AOC-CR-350) | <input type="checkbox"/> Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611) |
| <input checked="" type="checkbox"/> Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605) | <input type="checkbox"/> Judicial Findings And Order For Sex Offenders - Active Punishment (AOC-CR-615, Side One) |
| <input type="checkbox"/> Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317) | <input type="checkbox"/> Additional Findings (AOC-CR-618) |
| <input type="checkbox"/> Victim Notification Tracking Form | <input type="checkbox"/> Convicted Sex Offender Permanent No Contact Order (AOC-CR-620) |
| <input type="checkbox"/> Additional File No.(s) And Offense(s) (AOC-CR-626) | <input type="checkbox"/> Other: _____ |

Date	Date Certified Copies Delivered To Sheriff	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input checked="" type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court	SEAL
11/2/15				

Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA

PASQUOTANK

County

File No.

15CRS051241

51

In The General Court Of Justice

☐ District ☒ Superior Court Division

STATE VERSUS

Name Of Defendant

HALL, DONOVAN, LETRELL

Offense

POSSESSION OF FIREARM BY FELON

FELONY JUDGMENT
FINDINGS OF AGGRAVATING
AND MITIGATING FACTORS
(STRUCTURED SENTENCING)

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- ☐ 1. The Defendant: ☐ a. induced others to participate in the commission of the offense.
☐ b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- ☐ 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- ☐ 2a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- ☐ 3. The offense was committed for the purpose of: ☐ a. avoiding or preventing a lawful arrest. ☐ b. effecting an escape from custody.
- ☐ 4. The defendant was: ☐ a. hired to commit the offense. ☐ b. paid to commit the offense.
- ☐ 5. The offense was committed to: ☐ a. disrupt ☐ b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- ☐ 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Division of Adult Correction, jailer, fireman, emergency medical technician, ambulance attendant, social worker, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- ☐ 6a. The offense was committed against or proximately caused serious harm as defined in G.S. 14-163.1 or death to a law enforcement agency animal, an assistance animal, or a search and rescue animal (Applies to offenses committed on or after December 1, 2009.) as defined in G.S. 14-163.1, while engaged in the performance of the animal's official duties.
- ☐ 7. The offense was especially heinous, atrocious or cruel.
- ☐ 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- ☐ 9. (select appropriate option depending on date of offense)
☐ a. (use for offenses committed prior to December 1, 2012) The defendant held public office at the time of the offense and the offense related to the conduct of the office.
☐ b. (use for offenses committed on or after December 1, 2012) The defendant held public elected or appointed office or public employment at the time of the offense and the offense directly related to the conduct of the office or employment. (NOTE: The court must notify the State Treasurer as required by G.S. 15A-1340.16(f).)
- ☐ 9a. The defendant is a firefighter or rescue squad worker, and the offense is directly related to service as a firefighter or rescue squad worker. (Applies to offenses committed on or after December 1, 2013.)
- ☐ 10. The defendant: ☐ a. was armed with a deadly weapon at the time of the crime. ☐ b. used a deadly weapon at the time of the crime.
- ☐ 11. The victim was: ☐ a. very young. ☐ b. very old. ☐ c. mentally infirm. ☐ d. physically infirm. ☐ e. handicapped.
- ☐ 12. The defendant committed the offense while on pretrial release on another charge.
- ☐ 12a. The defendant has, during the 10-year period prior to the commission of the offense for which the defendant is being sentenced, been found by a court of this State to be in willful violation of the conditions of probation imposed pursuant to a suspended sentence or been found by the Post-Release Supervision and Parole Commission to be in willful violation of a condition of parole or post-release supervision imposed pursuant to release from incarceration. The Court finds this aggravating factor beyond a reasonable doubt. (Applies to offenses committed on or after December 1, 2008.)
- ☐ 13. The defendant involved a person under the age of 16 in the commission of the crime.
- ☐ 14. The offense involved: ☐ a. an attempted taking of property of great monetary value. ☐ b. the actual taking of property of great monetary value.
☐ c. damage causing great monetary loss. ☐ d. an unusually large quantity of contraband.
- ☐ 15. The defendant took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense.
- ☐ 16. The offense involved the sale or delivery of a controlled substance to a minor.
- ☐ 16a. The offense is the manufacture of methamphetamine and was committed where a person under the age of 18 lives, was present, or was otherwise endangered by exposure to the drug, its ingredients, its by-products, or its waste.
- ☐ 16b. The offense is the manufacture of methamphetamine and was committed in a dwelling that is one of four or more contiguous dwellings.
- ☐ 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- ☐ 18. The defendant does not support the defendant's family.
- ☐ 18a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D, or E felony if committed by an adult. ☐ The Court finds this aggravating factor beyond a reasonable doubt.
- ☐ 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- ☐ 19a. The offense is a violation of G.S. 14-43.11, G.S. 14-43.12, or G.S. 14-43.13, and involved multiple victims. (Applies to offenses committed on or after October 1, 2013.)
- ☐ 19b. The offense is a violation of G.S. 14-43.11, G.S. 14-43.12, or G.S. 14-43.13, and the victim suffered serious injury as a result of the offense. (Applies to offenses committed on or after October 1, 2013.)
- ☐ 20. Additional written findings of factors in aggravation:

CERTIFIED
 a TRUE and CORRECT COPY
 Date: 10/5/15
 Deputy/Assistant/Clerk
 Superior Court
 Pasquotank County, NC
 Not valid without impressed seal

- ☐ The Court accepts the defendant's admission to the aggravating factor(s) noted above and finds the supporting evidence to be beyond a reasonable doubt.
- ☐ The jury finds these aggravating factors beyond a reasonable doubt.
- ☒ There are no findings of any aggravating factors.

MITIGATING FACTORS

- ☐ 1. The defendant committed the offense under:
- ☐ a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- ☐ b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- ☐ c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- ☐ d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- ☐ 2. The defendant:
- ☐ a. was a passive participant in the commission of the offense.
- ☐ b. played a minor role in the commission of the offense.
- ☐ 3. The defendant was suffering from a:
- ☐ a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- ☐ b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- ☐ 4. The defendant's:
- ☐ a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- ☐ b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- ☐ 5. The defendant has made:
- ☐ a. substantial restitution to the victim. ☐ b. full restitution to the victim.
- ☐ 6. The victim was more than 16 years of age and:
- ☐ a. was a voluntary participant in the defendant's conduct. ☐ b. consented to the defendant's conduct.
- ☐ 7. The defendant:
- ☐ a. aided in the apprehension of another felon.
- ☐ b. testified truthfully on behalf of the State in another prosecution of a felony.
- ☐ 8. ☐ a. The defendant acted under strong provocation.
- ☐ b. The relationship between the defendant and the victim was otherwise extenuating.
- ☐ 9. The defendant:
- ☐ a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
- ☐ b. exercised caution to avoid serious bodily harm or fear to other persons.
- ☐ 10. The defendant reasonably believed that the defendant's conduct was legal.
- ☐ 11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
- ☐ a. at an early stage of the criminal process. ☐ b. prior to arrest.
- ☐ 12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- ☐ 13. The defendant is a minor and has reliable supervision available.
- ☐ 14. The defendant has been honorably discharged from the United States Armed Services.
- ☒ 15. The defendant has accepted responsibility for the defendant's criminal conduct.
- ☐ 16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- ☐ 17. The defendant supports the defendant's family.
- ☐ 18. The defendant has a support system in the community.
- ☐ 19. The defendant has a positive employment history or is gainfully employed.
- ☐ 20. The defendant has a good treatment prognosis and a workable treatment plan is available.
- ☐ 21. Additional written findings of factors in mitigation:

☐ The Court makes no findings of any mitigating factors.

DETERMINATION

1. The Court finds that:
- ☐ the State provided the defendant with appropriate notice of the aggravating factor(s) in this case.
- ☒ the defendant waived any notice requirements as to the aggravating factor(s) in this case.
2. The Court finds that the State included in its criminal pleading the statement required by G.S. 15A-924(a)(7), if necessary.
3. The Court, having considered the evidence and arguments presented at the trial and sentencing hearing, and based on the admission(s) and findings of aggravating and mitigating factors as noted above,
- ☐ finds that the factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- ☒ finds that the factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.
- ☐ makes no determination as to the relative weights of the factors found above, because the sentence imposed is in the presumptive range.

Date

10/26/2015

Name Of Presiding Judge (Type Or Print)

THE HONORABLE KENNETH F CROW

Signature Of Presiding Judge

Kenneth F Crow