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## United States v. Marshall

United States Court of Appeals for the Fourth Circuit

January 17, 2019, Submitted; January 22, 2019, Decided

No. 18-4275

### Reporter

748 Fed. Appx. 533 \*; 2019 U.S. App. LEXIS 1971 \*\*; 2019 WL 291825

UNITED STATES OF AMERICA, Plaintiff - Appellee, v.  
MICHAEL MARSHALL, Defendant - Appellant.

**Notice:** PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

**Prior History:** **[\*\*1]** Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. (5:17-cr-00095-D-1). James C. Dever III, District Judge.

**Disposition:** AFFIRMED.

### Core Terms

guilty plea, phone—that, possessing, waived, non-jurisdictional, allegations, intelligent, indictment, citations, materials, quotation, six-month, violating, dispense, sentence, appeals, charges, contest, defects, admits, argues, merits, prison, marks, cell, pled

**Counsel:** G. Alan DuBois, Federal Public Defender, Stephen C. Gordon, 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, Assistant United States Attorney, Tamika G. Moses, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

**Judges:** Before WILKINSON and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

### Opinion

**[\*533]** PER CURIAM:

Michael Marshall appeals his conviction and six-month

sentence imposed after his guilty plea to violating [18 U.S.C. § 1791\(a\)\(2\)](#), [\(b\)\(4\) \(2012\)](#), possessing a cell phone while in prison. We affirm.

On appeal, Marshall argues that the Government failed to demonstrate that the device he admitted to possessing was a phone—that it was capable of making and receiving calls. Because Marshall pled guilty, however, he has waived this challenge to his conviction. See [United States v. Gosselin World Wide Moving, N.V.](#), [411 F.3d 502, 515 \(4th Cir. 2005\)](#) ("A voluntary and intelligent plea of guilty is an admission of all the elements of a formal criminal **[\*\*2]** charge. A defendant who pleads guilty therefore admits all of the factual allegations made in the indictment, and waives all non-jurisdictional defects, including the right to contest the factual merits of the charges." (internal citations and quotation marks omitted)). Accordingly, we affirm the district court's 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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