

UNPUBLISHED**UNITED STATES COURT OF APPEALS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

No. 18-4432

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TRAVIS JERMAINE WRIGHT,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Joseph F. Anderson, Jr., Senior District Judge. (3:09-cr-00967-JFA-1)

Submitted: December 20, 2018

Decided: January 4, 2019

Before WILKINSON, NIEMEYER, and THACKER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

William W. Watkins, Sr., WILLIAM W. WATKINS, PA, Columbia, South Carolina, for Appellant. Sherri A. Lydon, United States Attorney, Brook Bowers Andrews, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

APPENDIX A:

PER CURIAM :

Travis Jermaine Wright appeals from the district court's judgment revoking his supervised release and imposing a 30-month prison term followed by 3 years of supervised release. He contends that his due process rights were violated because the district court failed to ensure that he made a knowing and voluntary admission to violating the terms of his supervised release and waiver of his rights under Fed. R. Crim. P. 32.1 to a revocation hearing. Finding no error, we affirm.

Because Wright did not raise any objections in the district court to the adequacy of its inquiry, our review is for plain error. *See Henderson v. United States*, 568 U.S. 266, 272-73 (2013) (discussing plain error review). "A defendant's supervised release cannot be revoked without a full hearing unless the defendant knowingly and voluntarily admits to the allegations against [him] and waives [his revocation hearing] rights under Rule 32.1 of the Federal Rules of Criminal Procedure." *United States v. Farrell*, 393 F.3d 498, 500 (4th Cir. 2005). A knowing and voluntary waiver of the right to a full revocation hearing may be inferred from the totality of the circumstances and without a formal colloquy with the defendant. *Id.*; *see United States v. Stehl*, 665 F.2d 58, 59-60 (4th Cir. 1981) (holding that Fed. R. Crim. P. 11 "has no application to [supervised release] revocation proceedings").

After a thorough review of the record and the parties' briefs, we conclude that the totality of the circumstances establishes that Wright's admission to violating the terms of his supervised release and waiver of his rights to a full revocation hearing were knowingly and voluntarily made. We therefore find no plain error by the district court

and affirm its 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

FILED: January 4, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4432
(3:09-cr-00967-JFA-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

TRAVIS JERMAINE WRIGHT

Defendant - Appellant

JUDGMENT

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

APPENDIX A

FILED: February 12, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4432
(3:09-cr-00967-JFA-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

TRAVIS JERMAINE WRIGHT

Defendant - Appellant

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

UNITED STATES DISTRICT COURT
District of South Carolina

UNITED STATES OF AMERICA

v.

TRAVIS JERMAINE WRIGHTJudgment in a Criminal Case
(For Revocation of Probation or Supervised Release)Case No: 3:09-967 (001 JFA)
USM No: 18560-171Parks N. Small, FPD
Defendant's Attorney

THE DEFENDANT:

defendant does not contest the violations of condition(s) of the term of supervision. SEE APPENDIX E
 was found in violation of condition(s) after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
1	<u>New Criminal Conduct</u>	<u>6/12/18</u>
2	<u>New Criminal Conduct</u>	<u>6/12/18</u>
3	<u>New Criminal Conduct</u>	<u>6/12/18</u>
4	<u>New Criminal Conduct</u>	<u>6/12/18</u>

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has not violated condition(s) _____ and is discharged as to such violation(s) condition.

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 any material changes in economic circumstances.

Last Four Digits of Defendant's Soc. Sec. No.:
0457Defendant's Year of Birth:
1980City and State of Defendant's Residence:
Sumter, SCJune 12, 2018
Date of Imposition of Judgment

Signature of Judge

Joseph F. Anderson, Jr., United States District Judge
Name and Title of JudgeJune 13, 2018
Date

APPENDIX B

DEFENDANT: TRAVIS JERMAINE WRIGHT
CASE NUMBER: 3:09-967

IMPRISONMENT

The defendant's term of supervised release is hereby REVOKE and the defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of Thirty (30) months.

- The court makes the following recommendations to the Bureau of Prisons:
Defendant should receive credit from the date of arrest, November 25, 2017 to present towards the computation of sentence.
- 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 _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

APPENDIX D

(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case; o

he court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

(h) Supervised release following revocation. When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

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FILED: January 11, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4432
(3:09-cr-00967-JFA-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

TRAVIS JERMAINE WRIGHT

Defendant - Appellant

STAY OF MANDATE UNDER
FED. R. APP. P. 41(d)(1)

Under Fed. R. App. P. 41(d)(1), the timely filing of a petition for rehearing or rehearing en banc or the timely filing of a motion to stay the mandate stays the mandate until the court has ruled on the petition for rehearing or rehearing en banc or motion to stay. In accordance with Rule 41(d)(1), the mandate is stayed pending further order of this court.

/s/ Patricia S. Connor, Clerk

This Court looks for a significant procedural error in part by determining whether a decision is based on clearly erroneous facts. See: *United States v. Heath*, 559 F.3d 263, 267 (4th Circ. 2009) & *United States v. Curry*, 523 F.3d 436, 439 (4th Circ. 2008) In Counsel's opinion, it is a procedural error to accept a plea without a factual basis from the Government or the Defendant. In this case the Court asked the Defendant if he understood the charges and then accepted the plea except for the one question of if anyone had forced him to pled *nolo contendere*.

The District Court reviewed the charges the Clarendon County Sheriff's Office had brought against the Appellant, which formed the basis of the supervised release violations reported by the probation officer to the Court. The Appellant stated he understood the charges. The following colloquy then occurred.

The Court: *So at this Point I need to find out from you whether you want to admit or deny these charges. What is your Desire?*

The Defendant: *I pled nolo contendere, Sir. ... JA 29*

The Court later told the Appellant the following:

The Court: *Do you understand that if you don't contest the charges, I will impose a penalty as if you had admitted and been convicted of committing those charges. Do you understand?*

The Defendant: *Yes Sir.* JA30

Based on the above, the Court decided that the preponderance of the evidence standard for revocation of supervised release had been met. No evidence was admitted at the hearing. The Appellant had not been tried on the Clarendon County charges where a not guilty plea had been entered. His attorney had filed an objection to the Supervised Release Report denying the charges.

The district court judge did not conduct a full voluntariness examination to make sure the Appellant understood what his plea meant and what the possible consequences of the agreement between his lawyer and the AUSA attorney meant. The Court just told him they were going to treat his plea as a guilty plea.

The Appellant sent a hand written letter to the district court judge, which was filed as docket number 175 and considered by the court as a Notice of Appeal. In the letter Appellant states: *I didn't knowly and intelligently made plea of 30 months* JA 68 Appellant also states in the letter: *I'm not pleading not guilty but I say No Contendere because I'm willing to take a Class C violation.* JA 69

During Appellant's statement to the Court he refers to *a plea the government has offered.* JA 34 He also states *according to what my attorney*

was telling me, you know, it's best for me to take the plea. JA 34 There is no discussion with the Appellant about the terms of the “plea” and that what he is waiving his evidentiary for is a recommendation concerning sentencing to which the court is not bound and not a plea agreement.

A Rule 11 hearing is not required, but at a minimum the Court must make sure the person being found guilty and sentenced by the Court understands the proceedings. A Supervised Release Violation Report was issued. The appellant, through his attorney “denies all allegations of the Supervised Release Violation Report.....” JA 77 The Court mentioned the Report and stated “Neither party has taken objection to the calculation in the report.” JA 30 There is no evidence in the record that the Appellant had ever seen the report or the calculations. He was not asked about the report and not asked about his previous Objection to the Report.

The Court relied on responses from the lawyers and did not make a record to show the Appellant clearly understood the consequences of his *nolo contendere* plea and waiver of an evidentiary hearing. This is a procedural error that reaches the level of abuse of discretion.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
OFFICE OF THE CLERK

1100 East Main Street, Suite 501
Richmond, Virginia 23219-3517

www.ca4.uscourts.gov

Patricia S. Connor
Clerk

Telephone
804-916-2700

June 26, 2018

CJA COUNSEL NOTICE

No. 18-4432, US v. Travis Wright
3:09-cr-00967-JFA-1

TO: William Wharton Watkins Sr.
WILLIAM W. WATKINS, PA
P. O. Box 7365
Columbia, SC 29202-7365
803-782-0925
wwwatkins@sc.rr.com

Thank you for accepting appointment on appeal in this case. This office will work with you in any way necessary in connection with the appointment. The case manager for this case is Joy Moore, and the following information is provided for your use (click on an underlined document to access the document on the court's web site, www.ca4.uscourts.gov).

Initial Forms: Following forms must be filed within 14 days.

- **Appearance of Counsel** (must be registered for electronic case filing)
- **Docketing Statement** (required for appointments at the beginning of the appeal)
- **Transcript Order Form** (order any necessary transcript)

Appointment and Case Information: Time and expense records must be maintained in accordance with the **CJA Payment Memorandum** to permit payment at the end of the case.

SUPERVISED RELEASE VIOLATION REPORT
United States Probation Office
Columbia, SC

ADDENDUM

Travis Jermaine Wright
Docket Number: 3:09CR00967-001
Columbia Division

April 3, 2018

OBJECTIONS

By the Government

On March 13, 2018, Assistant U.S. Attorney Jay N. Richardson advised the probation officer that there are no objections to the violation report.

By the Defendant

On March 27, 2018, Assistant Federal Public Defender, James K. Rogers advised the probation officer that the defendant denies all the allegations of the Supervised Release Violation report and requests a full hearing.

Probation Officer's Response

The government will provide evidence supporting the violations outlined in the report.

Respectfully submitted,

Dickie Brunson
Chief U.S. Probation Officer

Eugene E. Rodillo, Jr.

By:

Eugene E. Rodillo, Jr.
United States Probation Officer

Reviewed and Approved By:

Todd E. Salley

Todd E. Salley
Supervisory U. S. Probation Officer

EER/33941

**SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY REPORT**

HENRY D. MCMASTER
Governor



MARK A. KEEL
Chief

Ernie Grice
Clarendon County Sheriff's Office
P.O. Box 1289
Manning, SC 29102

DRUG ANALYSIS

May 11, 2018

SLED LAB: L18-00330

Your Case No: 171114541

Incident Date: 11/25/2017

[S] Travis Wright

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

**Mark A. Keel, Chief
South Carolina Law Enforcement Division**

ITEMS OF EVIDENCE:

Sub # 1 On January 10, 2018, items were received in B272874 from Barbara Proctor of the Clarendon County Sheriff's Office.

Item: 1.1 Ziplock bag containing...

Item: 1.1.1 Cloth glove containing...

Item: 1.1.1.1 Prescription bottle containing rock substance.

RESULTS:

Cocaine Base (Crack) (C-II) found in the sample tested; 1 tested. Net weight: 9.02 +/- 0.01 grams (139.19 +/- 0.15 grains). Confidence level for the weight is 99.7%.



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

APPENDIX F

May 11, 2018
L18-00330

Page 2 of 3

Item: 1.1.1.2

Plastic sandwich bag containing two (2) plastic sandwich bags containing plant material.

RESULTS:

Marijuana (C-I) found in the sample tested; 1 tested. Net weight: 12.82 ± 0.01 grams (0.4525 ± 0.0004 ounces). Confidence level for the weight is 99.7%.

The maximum attainable statutory threshold has been met for this substance. Net weight (excluding all packaging) of the remaining substance is 6.82 grams.

Item: 1.1.1.3

Box containing digital scale.

RESULTS:

No analysis performed.

Item: 1.1.2

Plastic sandwich bag containing sixty (60) glassine packets containing powder substance.

RESULTS:

Heroin (C-I) found in the sample tested; 20 tested. Total net weight: 0.364 ± 0.004 grams (5.617 ± 0.062 grains). Confidence level for the weight is 99.7%.

A hypergeometric sampling plan has been used for this item. An estimate of the net weight (substance only) for the remaining untested material is 0.720 ± 0.061 grams. Based on hypergeometric statistics, with 95% confidence, at least 90% of the untested material contains the analyte of interest.

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.

Brittnee Hill
Brittnee Hill
Forensic Scientist



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014
P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351



1 MR. ROWELL: THANK YOU, YOUR HONOR. I KNOW YOU
2 HAVE HAD AN OPPORTUNITY TO READ THE FACTS THAT UNDERLIE THIS
3 NEW CRIMINAL CONDUCT; ALL OF WHICH THAT OCCURRED ON
4 NOVEMBER 25TH, 2017.

5 YOUR HONOR, ESSENTIALLY WE HAVE A TRAFFIC STOP. WE HAVE
6 THE DEFENDANT IN A VEHICLE, DRIVING A VEHICLE WITH SOME
7 ALCOHOL IN THE CAR. HE MAKES A POST-MIRANDA STATEMENT
8 TALKING ABOUT THE FACT THAT HE RAN BECAUSE OF THE AMOUNT OF
9 ALCOHOL HE HAD HAD TO DRINK, SO I THINK THE FACTS WITH
10 RESPECT TO THE GRADE C VIOLATION ARE PRETTY CLEAR.

11 THE GRADE A VIOLATIONS ARE BASED ON SOME DRUGS THAT WERE
12 FOUND ON A FOOT-PATH SOME DISTANCE FROM WHERE THE DEFENDANT
13 WAS -- WHERE HE LEFT HIS VEHICLE. AT THIS TIME DUE TO THE
14 BACKLOG AT SLED AND THE SPEED WITH WHICH WE HAVE HAD THIS
15 HEARING THERE IS NO LAB ANALYSIS OF THE DRUGS, AND SO THE
16 ACTUAL DRUG WEIGHTS ARE STILL AT ISSUE.

17 AND I WOULD SAY THAT HIS POSSESSION OF THOSE DRUGS --
18 THERE IS A FACTUAL QUESTION THAT COULD HAVE BEEN LITIGATED,
19 BUT IN LIGHT OF THE FACT THAT WE DON'T HAVE A DRUG ANALYSIS
20 AND THAT WE HAVE REACHED AN AGREEMENT AS TO WHAT SENTENCE WE
21 WILL BOTH RECOMMEND TO THE COURT, I'M ADVOCATING FOR A
22 30-MONTH SENTENCE. IT'S SOMEWHERE IN BETWEEN I THINK A C
23 VIOLATION AND A GRADE A VIOLATION. IT TAKES INTO
24 CONSIDERATION THE DEFENDANT'S AGREEMENT TO NOT CONTEST THE
25 CHARGES WHICH PREVENTS THE GOVERNMENT FROM HAVING TO CALL

AMENDMENT 5

Criminal actions-Provisions concerning-Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6

Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence

(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case; or

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**Additional material
from this filing is
available in the
Clerk's Office.**