

APPENDIX A

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UNPUBLISHED**UNITED STATES COURT OF APPEALS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

No. 18-4369

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MAURICE MONTRAE PARKS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. W. Earl Britt, Senior District Judge. (5:17-cr-00190-BR-1)

Submitted: April 12, 2019

Decided: April 24, 2019

Before WILKINSON and MOTZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

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, Kristine L. Fritz, Assistant United States Attorney, 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Unpublished opinions are not binding precedent in this circuit.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:

Maurice Montrae Parks appeals his conviction and 90-month sentence imposed following his guilty plea to possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g) (2012). On appeal, Parks argues that his prosecution and resulting sentence violate the Double Jeopardy Clause's prohibition against successive punishments for the same offense because the same underlying conduct had previously formed the basis for the revocation of his supervised release and resulting postrevocation sentence of imprisonment. Finding no error, we affirm.

"We review *de novo* questions concerning the Double Jeopardy Clause." *United States v. Schnittker*, 807 F.3d 77, 81 (4th Cir. 2015). As Parks properly concedes, his argument is foreclosed by binding precedent. We have previously determined that "[t]he sentence imposed upon revocation of a term of supervised release is an authorized part of the original sentence," intended to sanction the defendant's breach of the court's trust in violating the terms of his release, "leaving the punishment for any new criminal conduct to the court responsible for imposing the sentence for that offense." *United States v. Woodrup*, 86 F.3d 359, 361 (4th Cir. 1996) (emphasis and internal quotation marks omitted); *see also Johnson v. United States*, 529 U.S. 694, 701 (2000) ("We therefore attribute postrevocation penalties to the original conviction."). Because the punishment imposed on a defendant for violating his supervised release terms is considered punishment for his original offense, not for his subsequent offense, "the punishment imposed for this latter offense is not barred by the Double Jeopardy Clause." *Woodrup*, 86 F.3d at 362.

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It is well-settled that “[a] decision of a panel of this court becomes the law of the circuit and is binding on other panels unless it is overruled by a subsequent en banc opinion of this court or a superseding contrary decision of the Supreme Court.” *United States v. Collins*, 415 F.3d 304, 311 (4th Cir. 2005) (internal quotation marks omitted). As *Woodrup* has not been affected by any intervening en banc or Supreme Court decision, Parks’ argument is unavailing.

Accordingly, although we deny the Government’s motion for summary affirmance, *see* 4th Cir. R. 27(f)(1), 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

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA

v.

MAURICE MONTRAE PARKS

JUDGMENT IN A CRIMINAL CASE

Case Number: 5:17-CR-190-1BR

USM Number: 52803-056

Joseph L. Ross, II, Stephen C. Gordon

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) 1 - Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(1),	Possession of a firearm by a felon	9/5/2015	1
18 U.S.C. § 924(a)(2)			

The defendant is sentenced as provided in pages 2 through 8 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.

5/25/2018
Date of Imposition of JudgmentW. Earl Britt, Senior U.S. District Judge
Name and Title of Judge5/27/2018
Date

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DEFENDANT: MAURICE MONTRAE PARKS
CASE NUMBER: 5:17-CR-190-1BR

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 - 90 months

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

The court recommends mental health treatment and educational training.

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

DEFENDANT: MAURICE MONTRAE PARKS
CASE NUMBER: 5:17-CR-190-1BR

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 make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *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)*
7. 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.

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DEFENDANT: MAURICE MONTRAE PARKS
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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

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DEFENDANT: MAURICE MONTRAE PARKS
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ADDITIONAL SUPERVISED RELEASE TERMS

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.

DEFENDANT: MAURICE MONTRAE PARKS
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SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate as directed in a program approved by the probation office for the treatment of narcotic addiction, drug dependency, or alcohol dependency which will include urinalysis testing or other drug detection measures and may require residence or participation in a residential treatment facility.

The defendant shall participate in a program of mental health treatment, as directed by the probation office.

The defendant shall participate in such vocational training program as may be directed by the probation office.

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 cooperate in the collection of DNA as directed by the probation officer.

The defendant shall support his dependents.

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CRIMINAL MONETARY PENALTIES

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

TOTALS	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
	\$ 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>
TOTALS	\$ 0.00	\$ 0.00	

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: MAURICE MONTRAE PARKS
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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 \$ 100.00 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 \$100.00 special assessment is due in full 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:
The defendant shall forfeit to the United States the defendant's interest in the property specified in the Order of Forfeiture entered on May 25, 2018.

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.

1 affecting commerce, any firearm.

2 In order to sustain its burden of proof for this
3 offense, the government must prove the following three
4 essential elements beyond a reasonable doubt: First, that
5 the defendant has previously been convicted of a crime in a
6 court which was punishable by a term of imprisonment
7 exceeding one year; second, that, thereafter, the defendant
8 knowingly possessed a firearm; and, third, that his
9 possession of the firearm was in or affecting commerce.

10 The parties have stipulated that prior to
11 September 5th, 2015, the defendant had previously been
12 convicted of felony that is punishable by a term of
13 imprisonment for a term exceeding one year and his rights to
14 possess a firearm had not been restored. Evidence of a
15 defendant's previous conviction of a crime punishable by a
16 term of imprisonment exceeding one year is a necessary
17 element of the offense charged, but such evidence does not
18 mean that there is any presumption or inference of guilt as
19 to this charge.

20 The second element the government must prove is
21 that the defendant knowingly possessed the firearm.
22 "Knowingly" means that the act was done voluntarily and
23 intentionally and not because of mistake or accident. The
24 law recognizes two kinds of possession: Actual possession
25 and constructive possession. A person who knowingly has

1 direct physical control over a thing, at a given time, is in
2 actual possession of it.

3 A person who, although not in actual possession,
4 knowingly has both the power and the intention, at a given
5 time, to exercise dominion and control over a thing, either
6 directly or through another person or persons, is then in
7 constructive possession of it. The law also recognizes that
8 possession may be sole or joint. If one person alone has
9 actual or constructive possession of a thing, possession is
10 sole. If two or more persons share actual or constructive
11 possession of a thing, possession is joint.

12 You may find that the element of possession, as
13 that term is used in these instructions, is present if you
14 find beyond a reasonable doubt that the defendant had actual
15 or constructive possession, either alone, or jointly with
16 others.

17 The term "firearm" means (A) any weapon, (including
18 a starter gun), which will or is designed to or may be
19 readily be converted to expel a projectile by the action of
20 an explosive; (B), the frame or receiver of any such weapon;
21 and (C), any firearm or muffler or firearm silencer; or (D),
22 any destructive device. The term does not include an antique
23 firearm.

24 The third element the government must prove beyond
25 a reasonable doubt is that the defendant's possession of the

1 firearm was in or affecting commerce. Commerce means travel,
2 trade, traffic, transportation or communication among several
3 states. Interstate commerce occurs when something of value
4 crosses a state line. The government may meet its burden to
5 prove this element by providing beyond a reasonable doubt
6 that the firearm in this case at any time traveled across the
7 state boundary.

8 So, members of the jury, if you find from the
9 evidence and beyond a reasonable doubt that: First, the
10 defendant has previously been convicted of a crime in a court
11 which was punishable by a term of imprisonment exceeding one
12 year; second, thereafter, the defendant knowingly possessed a
13 firearm; and, third, his possession of the firearm was in or
14 affecting commerce, then it would be your duty to find the
15 defendant "guilty". If you fail to so find, then you must
16 find the defendant "not guilty".

17 You will note that the indictment charges that the
18 offense was committed "on or about" a certain date. The
19 proof need not establish with certainty the exact date of the
20 alleged offense. It is sufficient if the evidence in the
21 case establishes beyond a reasonable doubt that the offense
22 was committed on a date reasonably near the date alleged.

23 I caution you, members of the jury, that you are
24 here to determine the guilt or innocence of the accused from
25 the evidence in this case. The defendant is not on trial for

1 minute. Before you do, raise that mic. Raise that. If you
2 happen to hit it, it goes into my hearing aid. Thank you.

3 (Witness excused)

4 THE COURT: Call your next witness.

5 MR. BRUCE: Your Honor, at this time -- we have
6 filed a stipulation and the Court -- the clerk has a filed
7 copy. And I would like to read it to the jury. This
8 involves the stipulation we discussed at the beginning of the
9 trial.

10 THE COURT: You may proceed.

11 MR. BRUCE: The United States of America, by and
12 through the United States Attorney for the Eastern District
13 of North Carolina, and the defendant, by and through his
14 respective counsel, hereby stipulate as follows: The jury
15 must accept as proven that prior to September 5, 2015 Maurice
16 Montrae Parks, the defendant sitting before you today, had
17 previously been convicted of a felony that is punishable by
18 imprisonment for a term exceeding one year. His right to
19 possess a firearm had not been restored. The jury must
20 accept as proven that Maurice Montrae Parks is a felon.

21 Respectfully submitted, and then it has the
22 signatures of the Government and the defense.

23 THE COURT: Members of the jury, this stipulation
24 by the parties is simply what it says. It is proof of the
25 facts stipulated. You don't have to -- you're bound by those

1 facts.

2 Okay. Call your next witness.

3 MR. PUGH: Your Honor, the United States calls John
4 Griffin.

5 **JOHN GRIFFIN**

6 having been duly sworn, testified as follows:

7 THE WITNESS: John Griffin. Yes, I do.

8 THE CLERK: Thank you. You may take the stand.

9 THE COURT: State your name again into that
10 microphone for the benefit of the jury.

11 THE WITNESS: John Griffin.

12 THE COURT: You may proceed, counsel.

13 **DIRECT EXAMINATION**

14 BY MR. PUGH:

15 Q. Can you please tell the members of the jury what
16 you do for a living.

17 A. Yes. I'm a special agent with the ATF, which is
18 also known as the Bureau of Alcohol, Tobacco, Firearms and
19 Explosives.

20 Q. How long have you been with the ATF?

21 A. Approximately 11 years.

22 Q. And briefly, could you summarize your duties for
23 the members of the jury.

24 A. Primary duties consist of an agent being
25 responsible for conducting investigations that relate to

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:17-cr-190-1 (3)

UNITED STATES OF AMERICA)
)
 v.) INDICTMENT
)
 MAURICE MONTRAE PARKS)

The Grand Jury charges that:

COUNT ONE

(18 U.S.C. § 922(g))
(Felon in possession of a firearm)

On or about September 5, 2015, in the Eastern District of North Carolina, MAURICE MONTRAE PARKS, defendant herein, having been previously convicted of a crime punishable by a term of imprisonment exceeding one year, did knowingly possess in and affecting commerce, a firearm, in violation of Title 18, United States Code, Sections 922(g)(1) and 924.

[Remainder of page intentionally left blank]

APPENDIX E

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FORFEITURE NOTICE

As a result of the foregoing offense, the defendant shall forfeit to the United States any and all firearms and ammunition involved in or used in a knowing violation of Title 18, United States Code, Section 922(g), under the provisions of Title 18, United States Code, Section 924(d)(1), as made applicable by Title 28, United States Code, Section 2461(c).

The forfeitable property includes, but is not limited to, a Ruger, mini 14, .223 caliber rifle with serial number 18374244, and related ammunition.

If, as a result of any act or omission of the defendant, the above-described forfeitable property

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty,

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.

APPENDIX E

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REDACTED VERSION

A TRUE BILL Pursuant to the E-Government Act and the federal rules, the unredacted version of this document has been filed under seal.

FOREPERSON

DATE: 6/20/17

JOHN STUART BRUCE
United States Attorney

Jake D. Pugh
BY: JAKE D. PUGH
Assistant U.S. Attorney