

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-12784
Non-Argument Calendar

D.C. Docket No. 5:18-cr-00442-SLB-GMB-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ARCHIE WILLIAMS,

Defendant - Appellant.

Appeal from the United States District Court
for the Northern District of Alabama

(April 3, 2020)

Before WILSON, WILLIAM PRYOR, and JILL PRYOR, Circuit Judges.

PER CURIAM:

“APPENDIX A”

Archie Williams appeals his convictions for bank robbery (Count One) and possession of a firearm in furtherance of a crime of violence (Count Two). First, he argues that the district court abused its discretion when it denied his motion to withdraw his guilty plea as to bank robbery. And second, he argues that there was insufficient evidence to prove that he possessed a real firearm during the bank robbery. After careful review of the briefs and the record, we affirm.

I.

We review the denial of a defendant's motion to withdraw a guilty plea for abuse of discretion. *United States v. Freixas*, 332 F.3d 1314, 1316 (11th Cir. 2003). "There is no abuse of discretion unless the denial is arbitrary or unreasonable." *United States v. Brehm*, 442 F.3d 1291, 1298 (11th Cir. 2006) (per curiam) (internal quotation mark omitted). Where the defendant objects to a district court's claimed error but advances a different argument on appeal, we review for plain error. *United States v. Wright*, 392 F.3d 1269, 1277 (11th Cir. 2004). Under the plain error standard, a defendant must show that there was (1) error, (2) that was plain, and (3) that affected his substantial rights. *See Dell v. United States*, 710 F.3d 1267, 1275 (11th Cir. 2013). "[A]t least where the explicit language of a statute or rule does not specifically resolve an issue, there can be no plain error where there is no precedent from the Supreme Court or this Court

directly resolving it.” *United States v. Lejarde-Rada*, 319 F.3d 1288, 1291 (11th Cir. 2003) (per curiam).

Once the district court has accepted a defendant’s guilty plea, the defendant may withdraw it prior to sentencing if “the defendant can show a fair and just reason for requesting the withdrawal.” Fed. R. Crim. P. 11(d)(2)(B). “There is no absolute right to withdraw a guilty plea.” *United States v. Medlock*, 12 F.3d 185, 187 (11th Cir. 1994). In determining if the defendant has met his burden, a district court may consider the totality of the circumstances surrounding the plea, including: “(1) whether close assistance of counsel was available; (2) whether the plea was knowing and voluntary; (3) whether judicial resources would be conserved; and (4) whether the government would be prejudiced if the defendant were allowed to withdraw his plea.” *United States v. Buckles*, 843 F.2d 469, 472 (11th Cir. 1988) (citation omitted).

There is a strong presumption that statements made during a plea colloquy are true. *Medlock*, 12 F.3d at 187. Consequently, a defendant bears a heavy burden to show that his statements under oath were false. *United States v. Rogers*, 848 F.2d 166, 168 (11th Cir. 1988) (per curiam).

Here, the district court did not abuse its discretion by denying Williams’s motion to withdraw his guilty plea because he did not demonstrate a fair and just reason for requesting the withdrawal. First, it was within the district court’s

discretion to determine that Williams's assertions that he had clouded judgment when he pled guilty were not credible in light of Williams's statements under oath during his plea colloquy that he felt well and nothing was impacting his understanding of the proceedings. Second, Williams has not shown that the district court plainly erred by not explicitly explaining that his guilty plea as to Count One could be used against him at his trial for Count Two.¹ He has not pointed to any on-point precedent establishing that it is an error to deny a defendant's plea withdrawal when such consequences of a guilty plea are not explained. And finally, close assistance of counsel was available. He testified at his plea colloquy and at the hearing on his motion to withdraw that he had discussed the charge in Count One and pleading guilty with his counsel.² Therefore, we affirm the district court's denial of Williams's motion to withdraw his plea.

II.

We review the sufficiency of the evidence supporting a conviction *de novo*. *United States v. Boffil-Rivera*, 607 F.3d 736, 740 (11th Cir. 2010). The evidence is sufficient to support a conviction if, “after viewing the evidence in the light most

¹ Williams did not raise this argument before the district court.

² To the extent Williams raises an ineffective assistance of counsel argument, “[i]t is settled law in this circuit that a claim of ineffective assistance of counsel cannot be considered on direct appeal if the claims were not first raised before the district court and if there has been no opportunity to develop a record of evidence relevant to the merits of the claim.” *See United States v. Perez-Tosta*, 36 F.3d 1552, 1563 (11th Cir. 1994). Therefore, we decline to consider the sufficiency of counsel’s advice for the first time on Williams’s direct appeal.

favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Whether the evidence is direct or circumstantial, we accept all reasonable inferences that tend to support the government’s case. *See United States v. Macko*, 994 F.2d 1526, 1528 (11th Cir. 1993).

“[A]ny person who, during and in relation to any crime of violence . . . uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm” shall be sentenced to at least five years’ imprisonment. 18 U.S.C. § 924(c)(1)(A). A “firearm” is defined in a separate section as any weapon “which will or is designed to or may readily be converted to expel a projectile by the action of an explosive,” the “frame or receiver of any such weapon,” “any firearm muffler or firearm silencer,” or “any destructive device.” 18 U.S.C. § 921(a)(3).

“[A] § 924(c) conviction may be sustained by lay witness testimony that a defendant carried or used a gun.” *United States v. Hunt*, 187 F.3d 1269, 1271 (11th Cir. 1999) (per curiam). The government need not admit the gun itself into evidence, produce an expert witness to identify a firearm, or show with scientific certainty that the defendant’s device could fire projectiles to secure a § 924(c) conviction. *United States v. Woodruff*, 296 F.3d 1041, 1049 (11th Cir. 2002).

In *Hunt*, we held that there was sufficient evidence for the jury to draw a reasonable inference that an object in the defendant’s hand was a real gun and not a

toy when “[t]he [g]overnment offered the testimony of two witnesses who, at close range, observed Hunt point a gun at them,” and bank surveillance showed the defendant holding what appeared to be a gun. 187 F.3d at 1271. And in *Woodruff*, we held that sufficient evidence supported the defendant’s § 924(c) conviction because “the jury heard testimony about the weapon from three of the victims and viewed photographic evidence depicting the gun.” 296 F.3d at 1049; *see also* *United States v. King*, 751 F.3d 1268, 1274 (11th Cir 2014) (holding there was sufficient evidence to support § 924(c) convictions where the jury heard testimony from victims—several of whom had the weapon thrust into their face—about a gun being used in each robbery and saw videos and photographs of the robberies).

Here, there was sufficient evidence for a rational jury to conclude that the device Williams carried during the bank robbery was a firearm in violation of § 924(c). Under our precedent, the lay witness testimony of five people and the surveillance footage would reasonably allow a jury to draw the inference that Williams possessed a real firearm during the robbery. Therefore, we affirm Williams’s § 924(c) conviction.

AFFIRMED.

UNITED STATES DISTRICT COURT
Northern District of Alabama

UNITED STATES OF AMERICA

v.

Case Number 5:18-CR-442 SLB-GLB (001)

ARCHIE LEE WILLIAMS
 Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, ARCHIE LEE WILLIAMS, was represented by Brian Clark.

The defendant was found guilty on counts 1 and 2 after a plea of not guilty. Accordingly, the court finds the defendant guilty of the following counts, involving the indicated offenses:

| Title & Section | Nature of Offense | Count Number |
|-----------------------------|---|--------------|
| 18 U.S.C. § 2113(a) | Armed Bank Robbery | 1 |
| 18 U.S.C. § 924(c)(1)(A)(i) | Use and Carry a Firearm During and in Relation to a Crime of Violence | 2 |

As pronounced on July 12, 2019, the court sentences the defendant as provided in pages 2 through 6 of this Judgment. The court imposes the sentence pursuant to the Sentencing Reform Act of 1984.

The court ordered that the defendant shall pay to the United States a special assessment of \$200.00, for counts 1 and 2, which shall be due immediately.

The court further ordered that the defendant shall 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.

Signed this the 18th day of July, 2019.

Sharon Lovelace Blackburn

Sharon Lovelace Blackburn
 United States District Judge

Defendant: ARCHIE LEE WILLIAMS

Case Number: 5:18-CR-442 SLB-GLB (001)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **FORTY-ONE (41) months** as to Count One and **SIXTY (60) months** as to Count Two, for a total sentence of **ONE HUNDRED ONE (101) months**. Count Two shall run consecutively to the sentence imposed in Count One and any other sentence(s).

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

- 1) The defendant be allowed to participate in vocational training.

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

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 Marshal

Defendant: ARCHIE LEE WILLIAMS

Case Number: 5:18-CR-442 SLB-GLB (001)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **60 months** as to Counts 1 and 2 to run concurrently. The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

STANDARD CONDITIONS OF SUPERVISED RELEASE

While the defendant is on supervised release pursuant to this Judgment:

- 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of the time you were sentenced (if placed on probation) or released from custody (if supervised release is ordered), 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 to report to the probation officer, and you must report to the probation officer as instructed.
- 3) You must not commit another federal, state, or local crime.
- 4) 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). Revocation of supervision is mandatory for possession of a firearm.
- 5) You must not unlawfully possess a controlled substance.
- 6) 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. You must contribute to the cost of drug testing unless the probation officer determines you do not have the ability to do so. Based upon a court order entered during the period of supervision for good cause shown or resulting from a positive drug test or evidence of excessive use of alcohol, you shall be placed in the Substance Abuse Intervention Program (SAIP) (or comparable program in another district).
- 7) 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.
- 8) You must follow the instructions of the probation officer related to the conditions of supervision.
- 9) You must answer truthfully the questions asked by the probation officer.
- 10) 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 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. (If you have been convicted of a crime of violence or a drug trafficking offense, the probation office is responsible for complying with the notice provisions of 18 U.S.C. § 4042(b) and (c) if you change your residence.)
- 11) 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.
- 12) 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 the position or the 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.
- 13) 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.
- 14) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
- 15) 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.
- 16) 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.
- 17) You must fully and truthfully disclose financial information as requested by the probation officer related to the conditions of supervision. Financial information may include, but is not limited to, authorization for release of credit information, bank records, income tax returns, documentation of income and expenses, and other financial information regarding personal or business assets, debts, obligations, and/or agreements in which the defendant has a business involvement or financial interest.
- 18) You must support all dependents.

Defendant: ARCHIE LEE WILLIAMS

Case Number: 5:18-CR-442 SLB-GLB (001)

CONTINUATION OF STANDARD CONDITIONS OF SUPERVISED RELEASE

19) You must comply with the probation office's Policies and Procedures Concerning Court-Ordered Financial Obligations to satisfy the balance of any monetary obligation resulting from the sentence imposed in the case. Further, you must notify the probation officer of any change in your economic circumstances that might affect your ability to pay a fine, restitution, or assessment fee. If you become more than 60 days delinquent in payments of financial obligations, you may be: (a) required to attend a financial education or employment preparation program under the administrative supervision of the probation officer; (b) placed on home detention subject to location monitoring for a maximum period of 90 days under the administrative supervision of the probation officer (and you must pay the cost of monitoring unless the probation officer determines you do not have the ability to do so); and/or (c) placed in a community corrections center for up to 180 days under the administrative supervision of the probation officer (and you must pay the cost of subsistence unless the probation officer determines you do not have the ability to do so).

Defendant: ARCHIE LEE WILLIAMS
Case Number: 5:18-CR-442 SLB-GLB (001)

SPECIAL CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

- 1) You must not use or possess any narcotic or controlled substance except as prescribed to you by a licensed medical practitioner, and you must follow the instructions on the prescription. You must not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, etc.) that impair a person's physical or mental functioning, whether or not intended for human consumption, except as with the prior approval of the probation officer.
- 2) You must not go to, or remain at, any place where you know controlled substances are illegally sold, used, distributed, or administered without first obtaining the permission of the probation officer.
- 3) You must participate in the Substance Abuse Intervention Program (SAIP) (or comparable program in the district of supervision) under the administrative supervision of the probation officer, and you must comply with the requirements and rules of the program. This program includes the following components: (a) testing by the probation officer or an approved vendor to detect prohibited drug or alcohol use; (b) substance abuse education; (c) outpatient substance abuse treatment, which may include individual or group counseling, provided by the probation office or an approved vendor, and/or residential treatment; (d) placement in a community corrections center (halfway house) for up to 270 days; and/or (e) home confinement subject to electronic monitoring for up to 180 days. You must contribute to the costs of participation unless the probation officer determines you do not have the ability to do so.
- 4) You must not incur any new debts (other than normal debts for existing utilities, rental expenses, or mortgage payments), increase existing credit lines, or open any new lines of credit without the permission approval of the probation officer unless and until all court-ordered financial obligations have been paid in full. New debt includes contracts which obligate payments, credit agreements, and loans, including those with friends and family members.
- 5) You must cooperate in the collection of DNA under the administrative supervision of the probation officer

Defendant: ARCHIE LEE WILLIAMS
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RESTITUTION AND FORFEITURE

RESTITUTION

The court, pursuant to the Victim and Witness Restitution Act, finds that the following is a victim of defendant's criminal conduct and has sustained loss in the indicated amounts and orders restitution by the defendant as follows:

| <u>Name & address of payee</u> | <u>Amount</u> |
|--|---------------|
| FNB Bank 402 South Broad Street Scottsboro, AL 35768 Attn: John Dauser Phone: 256-574-7320 | \$13,411.40 |

Payments of restitution, without interest, are to be made to Clerk, U. S. District Court, for transfer to the payee.

Upon release from imprisonment, any remaining balance shall be paid in monthly payments during the period of supervision in accordance with the financial guidelines previously approved by the court for use in this district and administered by the probation office. Payment is due in full no later than the end of defendant's term of supervision.

Note: The victim's recovery is limited to the amount of their loss and the defendant's liability for restitution ceases if and when the victim receives full restitution.

UNITED STATES DISTRICT COURT
Northern District of Alabama

UNITED STATES OF AMERICA

v.

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ARCHIE LEE WILLIAMS
 Defendant.

*****AMENDED*****
JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, ARCHIE LEE WILLIAMS, was represented by Brian Clark.

The defendant pled guilty as to Count 1 and was found guilty by a jury as to count 2 after a plea of not guilty. Accordingly, the court finds the defendant guilty of the following counts, involving the indicated offenses:

| Title & Section | Nature of Offense | Count Number |
|-----------------------------|---|--------------|
| 18 U.S.C. § 2113(a) | Armed Bank Robbery | 1 |
| 18 U.S.C. § 924(c)(1)(A)(i) | Use and Carry a Firearm During and in Relation to a Crime of Violence | 2 |

As pronounced on July 12, 2019, the court sentences the defendant as provided in pages 2 through 5 of this Judgment. The court imposes the sentence pursuant to the Sentencing Reform Act of 1984.

The court ordered that the defendant shall pay to the United States a special assessment of \$200.00, for counts 1 and 2, which shall be due immediately.

The court further ordered that the defendant shall 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.

Signed this the 9th day of August, 2019.

Sharon Lovelace Blackburn

Sharon Lovelace Blackburn
 United States District Judge

** Judgment amended only as to paragraph 2, stating that defendant pled guilty to Count 1 and was found guilty by a jury after pleading not guilty as to Count 2.

Defendant: ARCHIE LEE WILLIAMS

Case Number: 5:18-CR-442 SLB-GLB (001)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **THIRTY-THREE (33) months** as to Count One and **SIXTY (60) months** as to Count Two. Count Two shall run consecutively to the sentence imposed in Count One and any other sentence(s).

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

- 1) The defendant be allowed to participate in vocational training.

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

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- 2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when to report to the probation officer, and you must report to the probation officer as instructed.
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- 4) 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). Revocation of supervision is mandatory for possession of a firearm.
- 5) You must not unlawfully possess a controlled substance.
- 6) 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. You must contribute to the cost of drug testing unless the probation officer determines you do not have the ability to do so. Based upon a court order entered during the period of supervision for good cause shown or resulting from a positive drug test or evidence of excessive use of alcohol, you shall be placed in the Substance Abuse Intervention Program (SAIP) (or comparable program in another district).
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- 18) You must support all dependents.

Defendant: ARCHIE LEE WILLIAMS

Case Number: 5:18-CR-442 SLB-GLB (001)

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Case Number: 5:18-CR-442 SLB-GLB (001)

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- 2) You must not go to, or remain at, any place where you know controlled substances are illegally sold, used, distributed, or administered without first obtaining the permission of the probation officer.
- 3) You must participate in the Substance Abuse Intervention Program (SAIP) (or comparable program in the district of supervision) under the administrative supervision of the probation officer, and you must comply with the requirements and rules of the program. This program includes the following components: (a) testing by the probation officer or an approved vendor to detect prohibited drug or alcohol use; (b) substance abuse education; (c) outpatient substance abuse treatment, which may include individual or group counseling, provided by the probation office or an approved vendor, and/or residential treatment; (d) placement in a community corrections center (halfway house) for up to 270 days; and/or (e) home confinement subject to electronic monitoring for up to 180 days. You must contribute to the costs of participation unless the probation officer determines you do not have the ability to do so.
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- 5) You must cooperate in the collection of DNA under the administrative supervision of the probation officer.