

APPENDIX

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UNITED STATES DISTRICT COURT

Northern District of Iowa

UNITED STATES OF AMERICA

v.

JEVONNE MARTELL COLEMAN

) **JUDGMENT IN A CRIMINAL CASE**

)

) Case Number: **0862 2:18CR01017-001**

)

) USM Number: **17772-029**

)

☒ ORIGINAL JUDGMENT

☐ AMENDED JUDGMENT

Date of Most Recent Judgment:

Reason for Amendment:

Christopher J. Nathan

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment filed on May 10, 2018

☐ 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) and 924(a)(2)	Possession of a Firearm by a Felon	08/09/2017	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.

C.J. Williams
United States District Court Judge

Name and Title of Judge

May 13, 2019

Date of Imposition of Judgment



Signature of Judge

May 14, 2019

Date

DEFENDANT: **JEVONNE MARTELL COLEMAN**
CASE NUMBER: **0862 2:18CR01017-001**

PROBATION

☐ The defendant is hereby sentenced to probation for a term of:

IMPRISONMENT

☒ The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: **108 months on Count 1 of the Indictment. It is ordered that the term of imprisonment for the instant offense be served concurrently with any term of imprisonment that may be imposed in the Iowa District Court for Dubuque County, Docket No. FECR124885, pursuant to USSG §5G1.3(c). It is ordered that the term of imprisonment for the instant offense be served concurrently with any term of imprisonment that may be imposed in the Iowa District Court for Dubuque County, Docket No. SMCR124886, pursuant to 18 U.S.C. § 3584.**

☒ The court makes the following recommendations to the Federal Bureau of Prisons:
It is recommended that the defendant participate in the Bureau of Prisons' 500-Hour Comprehensive Residential Drug Abuse Treatment Program or an alternate substance abuse treatment program.

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

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

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the United States 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: **JEVONNE MARTELL COLEMAN**
CASE NUMBER: **0862 2:18CR01017-001**

SUPERVISED RELEASE

- ☒ Upon release from imprisonment, the defendant will be on supervised release for a term of:
3 years on Count 1 of the Indictment.

MANDATORY CONDITIONS OF SUPERVISION

- 1) The defendant must not commit another federal, state, or local crime.
- 2) The defendant must not unlawfully possess a controlled substance.
- 3) The defendant must refrain from any unlawful use of a controlled substance.
The defendant 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 the defendant poses a low risk of future controlled substance abuse. *(Check, if applicable.)*
- 4) ☒ The defendant must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- 5) ☐ The defendant 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 the defendant resides, works, and/or is a student, and/or was convicted of a qualifying offense. *(Check, if applicable.)*
- 6) ☐ The defendant must participate in an approved program for domestic violence. *(Check, if applicable.)*

The defendant 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: **JEVONNE MARTELL COLEMAN**
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STANDARD CONDITIONS OF SUPERVISION

As part of the defendant's supervision, the defendant must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for the defendant's 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 the defendant's conduct and condition.

- 1) The defendant must report to the probation office in the federal judicial district where the defendant is authorized to reside within 72 hours of the time the defendant was sentenced and/or released from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed. The defendant must also appear in court as required.
- 3) The defendant must not knowingly leave the federal judicial district where the defendant is authorized to reside without first getting permission from the court or the probation officer.
- 4) The defendant must answer truthfully the questions asked by the defendant's probation officer.
- 5) The defendant must live at a place approved by the probation officer. If the defendant plans to change where the defendant lives or anything about the defendant's living arrangements (such as the people the defendant lives with), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 6) The defendant must allow the probation officer to visit the defendant at any time at the defendant's home or elsewhere, and the defendant must permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observes in plain view.
- 7) The defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, the defendant must try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about the defendant's work (such as the defendant's position or the defendant's job responsibilities), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) The defendant must not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- 9) If the defendant is arrested or questioned by a law enforcement officer, the defendant must notify the probation officer within 72 hours.
- 10) The defendant 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) The defendant 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) As directed by the probation officer, the defendant must notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and must permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 13) The defendant must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: **JEVONNE MARTELL COLEMAN**
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SPECIAL CONDITIONS OF SUPERVISION

The defendant must comply with the following special conditions as ordered by the Court and implemented by the United States Probation Office:

1. **The defendant must submit the defendant's person, property, house, residence, vehicle, papers, computers [as defined in 18 U.S.C. § 1030(e)(1)], other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The defendant must warn any other occupants that the premises may be subject to searches pursuant to this condition. The United States Probation Office may conduct a search under this condition only when reasonable suspicion exists that the defendant has violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.**
2. **The defendant must participate in a mental health evaluation. The defendant must complete any recommended treatment program, and follow the rules and regulations of the treatment program. The defendant must take all medications prescribed to the defendant by a licensed medical provider.**
3. **The defendant must participate in a substance abuse evaluation. The defendant must complete any recommended treatment program, which may include a cognitive behavioral group, and follow the rules and regulations of the treatment program. The defendant must participate in a program of testing for substance abuse. The defendant must not attempt to obstruct or tamper with the testing methods.**
4. **The defendant must not use or possess alcohol. The defendant is prohibited from entering any establishment that holds itself out to the public to be a bar or tavern without the prior permission of the United States Probation Office.**
5. **If not employed at a lawful type of employment as deemed appropriate by the United States Probation Office, the defendant must participate in employment workshops and report, as directed, to the United States Probation Office to provide verification of daily job search results or other employment related activities. In the event the defendant fails to secure employment, participate in the employment workshops, or provide verification of daily job search results, the defendant may be required to perform up to 20 hours of community service per week until employed.**

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them. Upon a finding of a violation of supervision, I understand the Court may: (1) revoke supervision; (2) extend the term of supervision; and/or (3) modify the condition of supervision.

Defendant

Date

United States Probation Officer/Designated Witness

Date

DEFENDANT: **JEVONNE MARTELL COLEMAN**
CASE NUMBER: **0862 2:18CR01017-001**

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 Assessment¹</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100	\$ 0	\$ 0	\$ 0

☐ 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 Loss²</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS \$ _____ \$ _____

☐ 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:

¹Justice for Victims of Trafficking Act of 2015, 18 U.S.C. § 3014.

²Findings 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.

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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 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:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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 will 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 must pay the cost of prosecution.
- ☐ The defendant must pay the following court cost(s):
- ☐ The defendant must forfeit the defendant's interest in the following property to the United States:

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.

United States Court of Appeals
For the Eighth Circuit

No. 19-2068

United States of America

Plaintiff - Appellee

v.

Jevonne Martell Coleman

Defendant - Appellant

Appeal from United States District Court
for the Northern District of Iowa - Dubuque

Submitted: January 17, 2020
Filed: June 8, 2020

Before KELLY, MELLOY, and KOBES, Circuit Judges.

KELLY, Circuit Judge.

Jevonne Coleman pleaded guilty to being a felon in possession of a firearm under 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The district court¹ accepted his plea and

¹The Honorable C.J. Williams, United States District Judge for the Northern District of Iowa, adopting the report and recommendation of the Honorable Mark

sentenced him to 108 months in prison. After sentencing, the Supreme Court decided that, to be convicted under § 922(g), the defendant must have known “he belonged to the relevant category of persons barred from possessing a firearm.” Rehaif v. United States, 139 S. Ct. 2191, 2200 (2019). This requires that Coleman knew he was a felon when he possessed the firearm in this case. Coleman now challenges the validity of his plea and conviction based on Rehaif. Because we find no basis for reversal, we affirm.

I.

On May 10, 2018, the grand jury indicted Coleman with one count of being a felon in possession of a firearm. See 18 U.S.C. §§ 922(g)(1), 924(a)(2). The indictment did not allege that Coleman knew he had a prior conviction punishable by more than one year in prison. Coleman subsequently filed a notice of intent to plead guilty. At the change-of-plea hearing, the magistrate judge explained that having been convicted of a crime punishable by more than one year in prison was an element of the offense. Coleman admitted that this element was established. However, Coleman was not told that knowing of his felon status at the time of possession was also an element of the offense, and he did not acknowledge that this element was satisfied. After Coleman pleaded guilty, the magistrate judge recommended that the district court accept Coleman’s plea. No objections were filed, and the district court accepted the plea. The court later sentenced Coleman and entered a judgment of conviction on May 14, 2019.

On June 21, 2019, the Supreme Court decided Rehaif, which clarified the scope of § 922(g). This circuit had previously held that § 922(g)(1) required the government to prove three elements: “(1) previous conviction of a crime punishable by a term of imprisonment exceeding one year, (2) knowing possession of a firearm,

Roberts, United States Magistrate Judge for the Northern District of Iowa.

and (3) the firearm was in or affecting interstate commerce.” United States v. Montgomery, 701 F.3d 1218, 1221 (8th Cir. 2012). Rehaif held that the government must also prove a fourth element: that the defendant “knew he belonged to the relevant category of persons barred from possessing a firearm.” Rehaif, 139 S. Ct. at 2200.

II.

On appeal, Coleman argues that Rehaif establishes two errors in his guilty plea. First, he contends that because he was not informed of the fourth essential element of a § 922(g) offense, his plea is constitutionally invalid. Second, he argues his plea violated Federal Rule of Criminal Procedure 11 because the district court did not inform him of the nature of the charge to which he was pleading under Rule 11(b)(1)(G) or determine that there was a factual basis for the plea under Rule 11(b)(3).

Coleman did not raise these arguments below so we review for plain error. See United States v. Jawher, 950 F.3d 576, 579 (8th Cir. 2020). Coleman must show (1) an error, (2) that is plain, and (3) that affects his substantial rights. United States v. Olano, 507 U.S. 725, 732 (1993). We will exercise our discretion to correct such an error only if it “seriously affects the fairness, integrity or public reputation of judicial proceedings.” Id. (cleaned up).

A.

Coleman satisfies the first two parts of the Olano plain-error test for both alleged errors. Although the Supreme Court decided Rehaif after Coleman’s plea and conviction, its holding applies here because it clarified what § 922(g) “has meant continuously since the date when it became law.” See Rivers v. Roadway Express, Inc., 511 U.S. 298, 313 n.12 (1994). Therefore, Coleman’s plea is constitutionally

invalid because he did not understand the essential elements of the offense to which he pleaded guilty. In other words, his plea was neither knowing nor intelligent because he did not have “real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process.” See United States v. Ochoa-Gonzalez, 598 F.3d 1033, 1036–38 (8th Cir. 2010) (quoting Bousley v. United States, 523 U.S. 614, 618 (1998)). Coleman’s plea also violated Rule 11 because the district court did not advise him of the knowledge-of-status element established by Rehaif and did not examine the record to determine whether there was a factual basis for finding such knowledge. See Fed. R. Crim. P. 11(b)(1)(G), (b)(3); Jawher, 950 F.3d at 579. Because we measure whether an error is plain based on the law at the time of appeal, both errors are now plain under Rehaif. See Jawher, 950 F.3d at 579.

B.

The government argues that Coleman does not satisfy the third part of plain-error review because he cannot show that either the constitutional error or the Rule 11 error affected his substantial rights. The Supreme Court has explained that, “in the ordinary case,” an error affects the defendant’s substantial rights if he or she demonstrates “a reasonable probability that, but for the error, the outcome of the proceeding would have been different.” Molina-Martinez v. United States, 136 S. Ct. 1338, 1343 (2016) (cleaned up). Coleman contends that he need not make this showing to gain relief for his constitutionally invalid plea. He asserts that this error “affects substantial rights as a *per se* matter” and thus constitutes structural error that requires automatic reversal. He concedes, however, that he must still satisfy the substantial-rights prong to gain relief for the Rule 11 error. See United States v. Dominguez Benitez, 542 U.S. 74, 83 (2004).

Coleman relies on our decision in Ochoa-Gonzalez to argue that a constitutionally invalid plea requires reversal without determining its effect on his

substantial rights. In Ochoa-Gonzalez, the defendant argued on direct appeal that her guilty plea was invalid in light of Flores-Figueroa v. United States, 556 U.S. 646 (2009), which held that, to be convicted of aggravated identity theft, “the defendant must know that the identity stolen belongs to a real person.” Ochoa-Gonzalez, 598 F.3d at 1036. Applying plain-error review, we examined Ochoa-Gonzalez’s plea colloquy and decided it showed that (1) neither her counsel, nor the government, nor the district court understood that this additional essential element applied and (2) Ochoa-Gonzalez did not know the identity she had stolen “actually belonged to somebody else.” Id. at 1037–38. Thus, we determined the district court had committed plain error by accepting her constitutionally invalid guilty plea. Id. at 1038. We also decided this error “affected her substantial rights as well as the fairness and integrity of the judicial proceedings,” and reversed her conviction. Id.

Contrary to Coleman’s argument, however, Ochoa-Gonzalez did not hold that the failure to advise the defendant of an essential element requires “*per se* reversal,” even when that failure renders the plea unconstitutional. Rather, Ochoa-Gonzalez applied all four parts of plain-error review and found each was satisfied given the proceedings in the district court. Crucial to our holding was that Ochoa-Gonzalez’s plea colloquy showed the additional element announced in Flores-Figueroa was not in fact satisfied in her case. She expressly told the district court that she did not know the passport number she had used “actually belonged to somebody else.” Id. at 1037. There was thus “a reasonable probability that, but for the error, the outcome of the proceeding would have been different.”² See Molina-Martinez, 136 S. Ct. at 1343.

²In this way, Ochoa-Gonzalez is similar to a Fourth Circuit case cited by Coleman, where the court vacated the defendant’s guilty plea on plain-error review because the plea colloquy established that he lacked the requisite knowledge of the conspiracy to which he pleaded guilty to joining. See United States v. Mastrapa, 509 F.3d 652, 660–61 (4th Cir. 2007).

Nevertheless, Coleman urges us to classify the constitutional error in this case as structural. The structural-error doctrine applies to a “narrow class of errors—defects ‘affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself.’” Becht v. United States, 403 F.3d 541, 547 (8th Cir. 2005) (quoting Neder v. United States, 527 U.S. 1, 8 (1999)). Structural errors “defy analysis by ‘harmless-error’ standards.” Arizona v. Fulminante, 499 U.S. 279, 309 (1991). The Supreme Court has indicated that there “may be a special category of forfeited errors that can be corrected regardless of their effect on the outcome.” Olan, 507 U.S. at 735. But we have explained “it is an open question” in this circuit “whether an unpreserved structural error automatically satisfies the third prong of the plain-error test.” United States v. Picardi, 739 F.3d 1118, 1123 n.3 (8th Cir. 2014) (citing Puckett v. United States, 556 U.S. 129, 140–41 (2009)). For purposes of this case, however, we will assume without deciding that Coleman would satisfy the third part of plain-error review if he could demonstrate that his constitutionally invalid plea is structural error.

The Supreme Court has found structural error “only in a very limited class of cases.” Neder, 527 U.S. at 8 (cleaned up). Neither the Supreme Court nor this court has ever identified a constitutionally invalid guilty plea as structural error.³ The “purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial.” Weaver v. Massachusetts, 137 S. Ct. 1899, 1907 (2017). Yet the Court has made clear that “most constitutional errors can be harmless.” Fulminante, 499 U.S. at 306. Indeed, “‘if the defendant had counsel and was tried by an impartial adjudicator, there

³The circuit courts that have considered the issue are split, with the Fifth, Sixth, and Tenth Circuits holding that a constitutionally invalid plea is not structural error, United States v. Trujillo, — F.3d —, No. 19-2057, 2020 WL 2745526, at *5 (10th Cir. May 27, 2020); United States v. Hicks, 958 F.3d 399 (5th Cir. 2020); Ruelas v. Wolfenbarger, 580 F.3d 403, 410–11 (6th Cir. 2009), while the Fourth Circuit holds otherwise, United States v. Gary, 954 F.3d 194, 207–08 (4th Cir. 2020).

is a strong presumption that any other errors that may have occurred’ are not ‘structural errors.’” United States v. Marcus, 560 U.S. 258, 265 (2010) (quoting Rose v. Clark, 478 U.S. 570, 579 (1986)).

With these principles in mind, we hold that Coleman’s constitutionally invalid plea is not structural error. Structural errors defy analysis by normal harmless-error standards because their consequences “are necessarily unquantifiable and indeterminate,” so reversal is automatic. United States v. Gonzalez-Lopez, 548 U.S. 140, 150 (2006). The error at issue here, by contrast, does not defy harmless-error standards and the resulting harm is not indeterminate. See, e.g., Jawher, 950 F.3d at 580–81 (deciding, in a post-Rehaif challenge to a § 922(g) conviction, that the defendant satisfied all four parts of plain-error review); United States v. Davies, 942 F.3d 871, 874 (8th Cir. 2019) (same); cf. Neder, 527 U.S. at 8–10 (holding that a jury instruction that omits an essential element of the offense is not structural error).⁴ Therefore, even in the context of a constitutionally invalid plea based on Rehaif, a

⁴The cases Coleman relies on do not require a different result. Bousley involved a collateral challenge to a guilty plea; it did not discuss plain error or structural error. 523 U.S. at 618. Henderson v. Morgan involved a collateral attack on a state-court conviction, where the prisoner argued his guilty plea was involuntary. 426 U.S. 637, 638–39 (1976). That case did not discuss plain error or structural error. Boykin v. Alabama concerned a challenge to the voluntariness of a guilty plea where “the judge asked no questions of petitioner concerning his plea, and petitioner did not address the court.” 395 U.S. 238, 239 (1969). Boykin also did not apply plain-error review or discuss structural error. Finally, Dominguez Benitez held that, on plain-error review, a defendant must demonstrate prejudice to gain reversal for a Rule 11 violation. 542 U.S. at 83. In a footnote, the Court contrasted Rule 11 errors with the error at issue in Boykin and suggested that where there is “no evidence that a defendant knew of the rights he was putatively waiving” by pleading guilty, the conviction must be reversed without regard to prejudice. *Id.* at 84 n.10 (citing Boykin, 395 U.S. at 243). We are reluctant to give this dicta from Dominguez Benitez the weight Coleman urges because the Court did not engage in any analysis of the structural-error doctrine.

defendant satisfies plain-error review only by showing that the error affected his or her substantial rights.

C.

Coleman alternatively argues that if we decline to treat his constitutionally invalid plea as structural error, he can still fulfill his burden under the substantial-rights prong of plain-error review. This requires that he demonstrate “a reasonable probability that, but for the error, he would not have entered the plea.” See Jawher, 950 F.3d at 579 (cleaned up); accord United States v. Williams, 946 F.3d 968, 973 (7th Cir. 2020) (requiring the same showing in the context of a constitutionally invalid plea based on Rehaif).

Coleman has not made this showing for either the constitutional error or Rule 11 error. To begin, he does not argue that he would not have pleaded guilty had he known of Rehaif. He instead suggests, as an “example,” that he “may have believed his [prior felony] convictions were expunged or his rights restored.” But he does not assert that he in fact had this belief or was otherwise unaware of his felon status when he possessed the firearm in this case. Moreover, evidence in the record indicates Coleman knew he was a convicted felon at the relevant time. Portions of the presentence investigation report, to which Coleman did not object, show he had previously been sentenced to multiple terms of imprisonment exceeding one year. Given these circumstances, Coleman has not shown a reasonable probability that he would not have pleaded guilty had he known of Rehaif. See United States v. Welch, 951 F.3d 901, 907 (8th Cir. 2020) (finding that, following Rehaif, the defendant could not show his substantial rights were affected because he had previously “received and served several prison sentences longer than one year for felony convictions”); United States v. Seltzer, 789 F. App’x 559, 561 (8th Cir. 2020) (same); see also Rehaif, 139 S. Ct. at 2198 (doubting that the government’s “obligation to prove a defendant’s

knowledge of his status will be . . . burdensome” because “knowledge can be inferred from circumstantial evidence”).

Because Coleman has not shown that either the constitutional error or the Rule 11 error affected his substantial rights, he is not entitled to relief on plain-error review. Accordingly, we affirm the judgment of the district court.

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

No: 19-2068

United States of America

Plaintiff - Appellee

v.

Jevonne Martell Coleman

Defendant - Appellant

Appeal from U.S. District Court for the Northern District of Iowa - Dubuque
(2:18-cr-01017-CJW-1)

JUDGMENT

Before KELLY, MELLOY and KOBES, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

June 08, 2020

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Adopted April 15, 2015
Effective August 1, 2015

Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964.

V. Duty of Counsel as to Panel Rehearing, Rehearing En Banc, and Certiorari

Where the decision of the court of appeals is adverse to the defendant in whole or in part, the duty of counsel on appeal extends to (1) advising the defendant of the right to file a petition for panel rehearing and a petition for rehearing en banc in the court of appeals and a petition for writ of certiorari in the Supreme Court of the United States, and (2) informing the defendant of counsel's opinion as to the merit and likelihood of the success of those petitions. If the defendant requests that counsel file any of those petitions, counsel must file the petition if counsel determines that there are reasonable grounds to believe that the petition would satisfy the standards of Federal Rule of Appellate Procedure 40, Federal Rule of Appellate Procedure 35(a) or Supreme Court Rule 10, as applicable. *See Austin v. United States*, 513 U.S. 5 (1994) (*per curiam*); 8th Cir. R. 35A.

If counsel declines to file a petition for panel rehearing or rehearing en banc requested by the defendant based upon counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion to withdraw must be filed on or before the due date for a petition for rehearing, must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for rehearing, and must request an extension of time of 28 days within which to file *pro se* a petition for rehearing. The motion also must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

If counsel declines to file a petition for writ of certiorari requested by the defendant based on counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

A motion to withdraw must be accompanied by counsel's certification that a copy of the motion was furnished to the defendant and to the United States.

Where counsel is granted leave to withdraw pursuant to the procedures of *Anders v. California*, 386 U.S. 738 (1967), and *Penson v. Ohio*, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing *pro se* a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petition for writ of certiorari.

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

No: 19-2068

United States of America

Appellee

v.

Jevonne Martell Coleman

Appellant

Appeal from U.S. District Court for the Northern District of Iowa - Dubuque
(2:18-cr-01017-CJW-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

July 21, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Sent to Client 7/21/20