

Appendix

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4949

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUSTICE TOWAN ROUNDTREE, a/k/a Bentley Koop, a/k/a Lil Koop,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Cameron McGowan Currie, Senior District Judge. (3:19-cr-00424-CMC-1)

Submitted: October 6, 2020

Decided: October 14, 2020

Before GREGORY, Chief Judge, WILKINSON, Circuit Judge, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Jeremy A. Thompson, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Columbia, South Carolina, for Appellant. A. Lance Crick, Acting United States Attorney, Casey Rankin Smith, Special Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Justice Towan Roundtree pled guilty to knowingly possessing a firearm and ammunition after having been convicted of a felony, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), 924(e). The district court sentenced Roundtree to 77 months' imprisonment. Roundtree now appeals, arguing that his sentence is unreasonable. We affirm.

On appeal, Roundtree argues that the district court erred when it denied his request to compel the Government to move for a one-level reduction in his offense level pursuant to U.S. Sentencing Guidelines Manual § 3E1.1(b) (2018). Rather than evaluating the merits of a defendant's challenge to the calculation of the Sentencing Guidelines range, "we may proceed directly to an assumed error harmlessness inquiry." *United States v. Gomez-Jimenez*, 750 F.3d 370, 382 (4th Cir. 2014) (internal quotation marks omitted). "To apply this assumed error harmlessness inquiry we require (1) knowledge that the district court would have reached the same result even if it had decided the [G]uidelines issue the other way and (2) a determination that the sentence would be reasonable even if the [G]uidelines issue had been decided in the defendant's favor." *United States v. McDonald*, 850 F.3d 640, 643 (4th Cir. 2017) (internal quotation marks omitted). The error will be deemed harmless only when we are "certain" that these requirements are met. *United States v. Gomez*, 690 F.3d 194, 203 (4th Cir. 2012). Here, the first part of the inquiry is satisfied because the "district court has expressly stated in a separate and particular explanation that it would have reached the same result." *Gomez-Jimenez*, 750 F.3d at 383.

With respect to the second step of the analysis, we note that, had the district court instead ruled in Roundtree's favor, his total offense level would have only dropped from

22 to 21, and with a criminal history category of V, his Guidelines range would have been 70 to 87 months' imprisonment. *See* USSG ch. 5, pt. A (sentencing table). We review a sentence for substantive reasonableness by “tak[ing] into account the totality of the circumstances.” *Gall v. United States*, 552 U.S. 38, 51 (2007). “Any sentence that is within or below a properly calculated Guidelines range is presumptively [substantively] reasonable” and that presumption “can only be rebutted by showing that the sentence is unreasonable when measured against the 18 U.S.C. § 3553(a) factors.” *United States v. Louthian*, 756 F.3d 295, 306 (4th Cir. 2014).

Roundtree's sentence—which is within both the Guidelines range applied by the district court and the Guidelines range that Roundtree argues should have applied—is presumptively substantively reasonable. *See id.* Roundtree has not rebutted this presumption on appeal. The district court reasonably determined that a within-Guidelines-range sentence was proper in light of the nature and circumstances of the offense and Roundtree's history and characteristics. Based on the factors identified by the court in sentencing Roundtree, we conclude that the 77-month sentence is substantively reasonable.

We therefore 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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA,)
)
 PLAINTIFF,)
)
 -VERSUS-) 3:19-CR-00424
) DECEMBER 3, 2019
 JUSTICE TOWAN ROUNDTREE,) COLUMBIA, SC
)
 DEFENDANT.)
 -----)

BEFORE THE HONORABLE CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE, PRESIDING
SENTENCING HEARING
*** REDACTED ***

A P P E A R A N C E S:

FOR THE GOVERNMENT: CASEY RANKIN SMITH, AUSA
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STENOTYPE/COMPUTER-AIDED TRANSCRIPTION

*** **

1 THE COURT: ALL RIGHT. MS. SMITH, YOU MAY CALL THE
2 CASE.

3 MS. SMITH: THANK YOU, YOUR HONOR. THE NEXT MATTER
4 IS THE UNITED STATES OF AMERICA VERSUS JUSTICE TOWAN
5 ROUNDTREE, DOCKET NUMBER 3:19-424. YOUR HONOR, WE ARE HERE
6 FOR A SENTENCING.

7 THE COURT: ALL RIGHT. MR. ROGERS, HAVE YOU AND
8 YOUR CLIENT, MR. ROUNDTREE, HAD A CHANCE TO READ, REVIEW, AND
9 DISCUSS HIS PRESENTENCE REPORT AND THE ADDENDUM TO IT?

10 MR. ROGERS: YES, YOUR HONOR.

11 THE COURT: MR. ROUNDTREE, DID YOU READ THIS
12 REPORT?

13 THE DEFENDANT: YES, MA'AM.

14 THE COURT: DID YOU HAVE A CHANCE TO DISCUSS IT
15 WITH MR. ROGERS?

16 THE DEFENDANT: YES, MA'AM.

17 THE COURT: MR. ROGERS, ARE THERE ANY OBJECTIONS?

18 MR. ROGERS: YES, YOUR HONOR.

19 THE COURT: THERE ARE?

20 MR. ROGERS: THERE ARE. JUST ONE.

21 THE COURT: OKAY.

22 MR. ROGERS: AND THE OBJECTION IS TO MR. ROUNDTREE
23 NOT RECEIVING THE THIRD LEVEL FOR ACCEPTANCE OF
24 RESPONSIBILITY.

25 THE COURT: OKAY. MY ADDENDUM SAYS THAT AFTER

1 BEING NOTIFIED OF THAT, YOU INDICATED THAT THERE WERE NO
2 OBJECTIONS, BUT THAT'S OKAY. I WILL LET YOU OBJECT.

3 MR. ROGERS: I APOLOGIZE. THAT WAS NOT MY
4 INTENTION IF I COMMUNICATED THAT TO PROBATION.

5 THE COURT: OKAY. HAVE YOU DISCUSSED THAT WITH
6 MR. ROUNDTREE?

7 MR. ROGERS: YES, YOUR HONOR, I HAVE.

8 THE COURT: OKAY. MR. ROUNDTREE, ARE YOU AWARE OF
9 THE POSITION YOUR ATTORNEY IS TAKING?

10 THE DEFENDANT: YES, MA'AM.

11 THE COURT: OKAY. YOU MAY HAVE A SEAT. ALL RIGHT.
12 MR. ROGERS, I WILL HEAR FROM YOU.

13 MR. ROGERS: YOUR HONOR, AT FIRST I DIDN'T THINK
14 THAT I COULD HAVE OBJECTED BECAUSE I THOUGHT IT WAS IN THE
15 SOLE PURVIEW OF THE PROSECUTOR TO MAKE THAT THIRD-LEVEL
16 REDUCTION. BUT AFTER DOING SOME RESEARCH, I FOUND SEVERAL
17 CASES THAT SAY THAT THE COURT DOES HAVE THE AUTHORITY TO
18 COMPEL THE GOVERNMENT TO MAKE THE MOTION FOR THE THIRD LEVEL
19 IF IT FINDS THAT THE BASIS THAT THE GOVERNMENT ASSERTS FOR
20 NOT ASKING FOR THE THIRD LEVEL IS IMPROPER.

21 ONE CASE IS JAWA, UNITED STATES VERSUS J-A-W-A, 675 FED
22 APPENDIX 229. AND IT DOES TALK ABOUT THE DISTRICT COURT MAY
23 COMPEL THE GOVERNMENT TO SUCH MOTION IF IT IS WITHHELD ON
24 IMPROPER GROUNDS. THE SAME HOLDING WAS FOUND IN UNITED
25 STATES VERSUS FOREMAN REPORTED AT 560 FED APPENDIX 219; BOTH

1 FOURTH CIRCUIT CASES.

2 AND FINALLY, YOUR HONOR, A CASE OF UNITED STATES VERSUS
3 DIVENS 650 F.3D 343 WHERE IN THAT CASE THE GOVERNMENT REFUSED
4 TO MAKE THE ADDITIONAL ONE-LEVEL REDUCTION BECAUSE THE
5 DEFENDANT REFUSED TO SIGN A PLEA AGREEMENT CONTAINING AN
6 APPELLATE WAIVER. AND IN THAT CASE THE COURT SAID THAT THAT
7 WAS NOT A VALID REASON FOR NOT MAKING THE ADDITIONAL REQUEST.

8 I UNDERSTOOD THE GOVERNMENT'S POSITION IS THAT THEY WERE
9 NOT MAKING THE THIRD REQUEST BECAUSE MR. ROUNDTREE FILED A
10 MOTION TO SUPPRESS, AND I DON'T THINK THAT THAT'S A PROPER
11 USE OF THE GOVERNMENT'S AUTHORITY IN THAT CASE. IT WOULD END
12 UP HAVING A CHILLING EFFECT ON ALL DEFENDANTS WHO WISH TO
13 LEGITIMATELY CHALLENGE THE CONSTITUTIONALITY OF THEIR SEARCH.

14 THE GOVERNMENT DIDN'T HAVE TO DO ANY MORE TO PREPARE.
15 AND AS THE 3E1.1(B) SAYS, DOESN'T HAVE TO PREPARE FOR TRIAL
16 BETWEEN -- THE DEFENDANT WAS ARRAIGNED ON MAY 10TH OF 2019
17 AND HE ENTERED HIS PLEA OF GUILTY ON SEPTEMBER 5TH OF 2019,
18 WHICH I SAY IS JUST A LITTLE LESS THAN FOUR MONTHS.

19 ONE OF THE REASONS FOR A CONTINUANCE IN THIS CASE WAS
20 BECAUSE THE GOVERNMENT WAS SUPERSEDING THE INDICTMENT TO ADD
21 THE REHAIF LANGUAGE TO THE INDICTMENT. SO IT WAS NOTHING
22 THAT THE DEFENDANT DID TO DELAY THE RESOLUTION OF THIS CASE.
23 AND WE THINK THAT THE -- IT'S IMPROPER FOR THE GOVERNMENT NOT
24 TO ASK FOR THE THIRD LEVEL JUST BECAUSE THE DEFENDANT TRIED
25 TO EXERCISE HIS CONSTITUTIONAL RIGHTS ON IT AND CHALLENGE THE

1 STOP.

2 SO FOR THOSE REASONS, YOUR HONOR, WE ARE ASKING THIS
3 COURT TO COMPEL THE GOVERNMENT TO MAKE THE MOTION FOR THE
4 THIRD LEVEL OF ACCEPTANCE OF RESPONSIBILITY.

5 THE COURT: THAT'S INTERESTING. ALL RIGHT.
6 MS. SMITH.

7 MS. SMITH: THANK YOU, YOUR HONOR. THE GOVERNMENT
8 BELIEVES THAT WE DO HAVE THE RIGHT TO NOT MOVE FOR THAT THIRD
9 LEVEL OF ACCEPTANCE. AND TO SAY THAT WE DIDN'T HAVE TO
10 PREPARE FOR TRIAL, WELL, YOUR HONOR, WE ESSENTIALLY LITIGATED
11 THIS ENTIRE CASE FOR THAT SUPPRESSION MOTION WITHOUT HAVING
12 TO CALL JUST, YOU KNOW, ANCILLARY WITNESSES FOR DRUG RESULTS
13 AND MAYBE A COUPLE OF OTHER OFFICERS THAT WERE ON SCENE.

14 YOUR HONOR, WE DID SUBSTANTIAL PREPARATION FOR THIS
15 CASE. WE CALLED OFFICERS, WE PROFFERED TESTIMONY FOR HIM TO
16 GO FORWARD. AND I TOLD THEM, MR. ROGERS THAT WE WOULD NOT
17 MOVE FOR THAT THIRD LEVEL OF ACCEPTANCE IF WE WERE GOING TO
18 LITIGATE ESSENTIALLY THE ENTIRE CASE THROUGH THE SUPPRESSION
19 MOTION.

20 YOUR HONOR, I THINK THAT WE DID HAVE TO PREPARE
21 SUBSTANTIALLY FOR THAT, AND I DON'T THINK THAT WE SHOULD BE
22 COMPELLED TO MOVE FOR THAT THIRD LEVEL OF ACCEPTANCE.
23 FORCING THE GOVERNMENT TO PREPARE FOR A SUPPRESSION MOTION
24 BEFORE YOU DECIDE TO PLEAD GUILTY IS REALLY THE OPPOSITE OF
25 ASSISTING PROSECUTION OF YOUR CASE.

1 THE COURT: WELL, AT THIS POINT, AS I THINK I'M
2 RIGHT, THERE IS NO APPELLATE WAIVER, SO I WOULD ASSUME THAT
3 HE'S STILL --

4 MS. SMITH: HE IS STILL FREE TO APPEAL.

5 THE COURT: -- STILL CHALLENGING HIS -- STILL ABLE
6 TO CHALLENGE THE SUPPRESSION RULING. SO, HE HAS, AS I
7 UNDERSTAND IT, ENTERED WHAT I WOULD CALL A CONDITIONAL PLEA
8 OF GUILTY SUBJECT TO HIS RIGHT TO APPEAL THE RULING ON THE
9 SUPPRESSION HEARING.

10 SO, HOW HAS HE ACCEPTED RESPONSIBILITY IF HE HAS ENTERED
11 A CONDITIONAL PLEA AND PRESERVED HIS RIGHT TO APPEAL THE
12 SUPPRESSION HEARING?

13 MR. ROGERS: YOUR HONOR, WE ARE NOT ATTEMPTING TO
14 CHALLENGE THE COURT'S RULING ON THE MOTION TO SUPPRESS. THE
15 COURT HAS RULED AND WE ARE NOT GOING TO FILE AN APPEAL BASED
16 ON THE COURT'S RULING ON THAT. HE HAS ACCEPTED
17 RESPONSIBILITY. OUR ISSUE WAS WHETHER THE SEARCH WAS GOOD.

18 THE COURT: RIGHT.

19 MR. ROGERS: THIS COURT HAS RULED THAT IT WAS. I'M
20 NOT CHALLENGING THAT ANY LONGER, SO -- AND HE UNDERSTANDS,
21 MR. ROUNDTREE UNDERSTANDS THAT, AND THAT'S WHY HE PLED GUILTY
22 BECAUSE HE HAD THE WEAPON ON HIM. THERE WAS NOTHING ELSE FOR
23 US TO DO.

24 THE ONLY THING I WOULD SAY, YOUR HONOR, IS THAT THE RULE
25 SPECIFICALLY SAYS IN PREPARATION FOR TRIAL. IT DOESN'T SAY

1 IN PREPARATION FOR A MOTION TO SUPPRESS. I CAN'T HELP WHAT
2 WITNESSES THE GOVERNMENT MAY HAVE TO CALL TO REBUT MY
3 CHALLENGE, BUT THE RULE SPECIFICALLY SAYS PREPARE FOR TRIAL.
4 SO, I -- THAT MAY BE SOMETHING DEPENDING UPON -- THAT'S OUR
5 POSITION.

6 *THE COURT:* WELL, I DON'T REALLY UNDERSTAND WHY
7 YOU'RE SAYING THAT HE -- YOU'RE SAYING HE'S DECIDED NOT TO
8 APPEAL. HE HAS A RIGHT TO APPEAL FROM MY RULING ON THE
9 SUPPRESSION HEARING AND HE HASN'T GIVEN UP THAT RIGHT, SO HOW
10 CAN YOU CHALLENGE THE LEGALITY OF THE SEARCH AND YET -- AND
11 ENTER A CONDITIONAL PLEA AND THEN ACCEPT FULL RESPONSIBILITY?
12 HE'S NOT ACCEPTING FULL RESPONSIBILITY. HE'S DENYING
13 RESPONSIBILITY BECAUSE HE'S SAYING IT'S AN ILLEGAL SEARCH.

14 *MR. ROGERS:* NOT IF WE DON'T FILE AN APPEAL ON THAT
15 ISSUE.

16 *THE COURT:* BUT THERE'S NOTHING IN HERE WHERE HE'S
17 WAIVED THE RIGHT TO APPEAL. HE HAS NOT ENTERED AN APPELLATE
18 WAIVER.

19 *MR. ROGERS:* BUT IT IS HIS RIGHT TO GO FORWARD ON
20 AN APPELLATE ISSUE OR NOT. AND I'M TELLING YOU, AS AN
21 OFFICER OF THE COURT, THAT HE DOESN'T PLAN TO CHALLENGE THE
22 COURT'S RULING ON THE SUPPRESSION MOTION. HE IS ACCEPTING
23 RESPONSIBILITY.

24 *THE COURT:* WELL, THAT WOULD BE UP TO HIM AND HE
25 HASN'T SAID THAT. SO, YOU KNOW, TWO DAYS FROM NOW WHEN HE --

1 AFTER HE'S BEEN SENTENCED, HE COULD FILE A NOTICE OF APPEAL
2 AND HAVE AN APPEAL.

3 MR. ROGERS: IS YOUR HONOR SAYING THAT A PERSON WHO
4 HAS A CONDITIONAL PLEA IS NOT ENTITLED TO A THIRD LEVEL OF
5 ACCEPTANCE OF RESPONSIBILITY?

6 THE COURT: EXACTLY. YOU'RE CHALLENGING THE --
7 YOU'RE CHALLENGING YOUR CONVICTION. HE'S STILL CHALLENGING
8 HIS CONVICTION. HE'S CONDITIONALLY PLED TO IT BUT HE WANTS
9 TO CHALLENGE THE LEGALITY OF THE SEARCH. IF HE'S DOING THAT,
10 HE'S STILL FIGHTING THE CHARGE. IF YOU'RE FIGHTING THE
11 CHARGE, HOW HAVE YOU ACCEPTED RESPONSIBILITY -- EXTRAORDINARY
12 OR THE THIRD STEP OF ACCEPTANCE OF RESPONSIBILITY. HE'S
13 STILL GETTING THE TWO LEVELS.

14 MR. ROGERS: WELL, I VIEW IT DIFFERENTLY, YOUR
15 HONOR. I DON'T VIEW IT AS FIGHTING THE CHARGE. HE'S
16 ADMITTING TO THE WEAPON, BUT HE IS--

17 THE COURT: THE WEAPON GOES AWAY IF HE WINS ON
18 APPEAL. THE CHARGE GOES AWAY IF HE WINS ON APPEAL.

19 MR. ROGERS: OF COURSE.

20 THE COURT: OF COURSE. SO HOW HAS HE ACCEPTED
21 RESPONSIBILITY?

22 MR. ROGERS: HE'S ACCEPTING THE RESPONSIBILITY THAT
23 HE WAS A FELON IN POSSESSION OF A WEAPON. HE'S NOT ACCEPTING
24 THAT THE STOP WAS GOOD. THAT'S THE DISTINCTION.

25 THE COURT: WELL, IF YOU'RE FIGHTING THE CHARGE,

1 THEN I AGREE WITH THE GOVERNMENT THAT HE'S NOT -- HE'S NOT
2 ENTITLED TO HAVE THE COURT COMPEL THEM TO MAKE THE MOTION TO
3 GIVE HIM THE THIRD LEVEL OFF FOR ACCEPTANCE.

4 *MR. ROGERS:* WELL, YOUR HONOR, TO ME THAT WOULD FLY
5 IN THE FACE OF RATIONALE IN THE DIVENS CASE, WHICH INDICATED
6 THAT HE REFUSED TO SIGN A PLEA AGREEMENT WITH AN APPEAL
7 WAIVER. SO BASED ON WHAT I THINK I HEAR THE COURT SAYING,
8 THAT'S THE SAME SITUATION. HE DIDN'T HAVE AN APPEAL WAIVER.
9 HE DIDN'T SIGN A--

10 *THE COURT:* NOBODY ASKED HIM TO SIGN A PLEA
11 AGREEMENT WITH AN APPEAL WAIVER. HE'S IN A SITUATION WHERE I
12 BELIEVE HE ENTERED A STRAIGHT-UP PLEA --

13 *MR. ROGERS:* HE DID.

14 *THE COURT:* -- WITH NO AGREEMENT WITH THE
15 GOVERNMENT, SO THAT -- AND NORMALLY THE REASON FOR THAT WOULD
16 BE THAT YOU DON'T WANT TO GIVE UP YOUR RIGHT TO APPEAL, WHICH
17 YOU'RE NOT REQUIRED TO GIVE UP YOUR RIGHT TO APPEAL. I'M
18 HAPPY FOR HIM TO APPEAL, BUT HE CAN'T -- HE CAN'T DO THAT AND
19 AT THE SAME TIME CLAIM TO HAVE FULLY ACCEPTED RESPONSIBILITY
20 IF HE'S ENTERED A CONDITIONAL PLEA. NOW, MAYBE I'M WRONG.
21 MAYBE HE DIDN'T ENTER A CONDITIONAL PLEA.

22 *MR. ROGERS:* WELL, THERE WAS NO LANGUAGE TO THAT
23 EFFECT, YOUR HONOR.

24 *THE COURT:* WELL, THERE WAS NO LANGUAGE THAT HE
25 GAVE UP THE RIGHT.

1 MR. ROGERS: I UNDERSTAND THAT. BUT I DON'T -- I
2 DIDN'T THINK THAT THE THIRD LEVEL WAS CONTINGENT ON WHETHER
3 OR NOT HE WANTED TO APPEAL.

4 THE COURT: WELL, IT'S UP TO THE GOVERNMENT TO MAKE
5 THE MOTION, AND I'M NOT -- I DON'T SEE ANY BAD FAITH IN THEM
6 SAYING THAT HE'S NOT ENTITLED TO IT BECAUSE HE IS FIGHTING
7 THE ISSUE OF THE SUPPRESSION OF THE GUN.

8 MR. ROGERS: WELL, I BELIEVE THAT I HAVE APPEALED
9 CASES WHERE A PERSON GOT THE THIRD LEVEL.

10 THE COURT: I'M SURE YOU HAVE BECAUSE THE
11 GOVERNMENT DOESN'T ASK FOR THE THIRD LEVEL NOT TO BE GIVEN.
12 THEY USUALLY DON'T PAY ATTENTION TO THAT VERY MUCH.

13 MR. ROGERS: THAT'S CORRECT. AND IN THIS CASE THE
14 GOVERNMENT IS SAYING HE SHOULDN'T GET THE THIRD LEVEL BECAUSE
15 HE CHALLENGED THE STOP, AND I DON'T THINK THAT'S PROPER.

16 THE COURT: IF HE HAD SUBSEQUENTLY SIGNED A PLEA
17 AGREEMENT AGREEING WITH THEM TO PLEAD GUILTY AND THAT WAS THE
18 END OF IT, THEN I WOULD AGREE WITH YOU, BUT HE'S NOT. I
19 DON'T THINK IT'S GOING TO MAKE ANY DIFFERENCE TO HIS SENTENCE
20 BUT, YOU KNOW, WE HAVE A FUNDAMENTAL DISAGREEMENT HERE ABOUT
21 THAT SITUATION.

22 MR. ROGERS: YES, YOUR HONOR.

23 THE COURT: SO, YOU KNOW, I WASN'T REALLY PREPARED
24 FOR THIS BECAUSE I WAS READING AN ADDENDUM THAT SAID YOU
25 DIDN'T OBJECT. I DON'T KNOW WHETHER MS. SMITH KNEW THAT SHE

1 WAS -- THAT HE WAS GOING TO RAISE THIS, SO I DON'T KNOW
2 WHETHER SHE'S HAD ANY CHANCE TO READ YOUR CASES THAT YOU'VE
3 CITED OR...

4 MS. SMITH: I DID NOT, YOUR HONOR. I THOUGHT HE --
5 I THOUGHT HE HAD NO OBJECTIONS AS WELL.

6 THE COURT: RIGHT. SO WE CAN EITHER DELAY THIS TO
7 GIVE US SOME CHANCE TO LOOK AT THIS AND SEE WHAT YOUR CASES
8 SAY OR WE CAN GO FORWARD. IT LOOKS LIKE HE'S A OFFENSE LEVEL
9 22, CRIMINAL HISTORY CATEGORY FIVE AS IT NOW STANDS. AND IF
10 YOU WERE RIGHT, THEN I GUESS HE WOULD BECOME A 21, FIVE, SO
11 THE GUIDELINE RANGE WOULD MOVE FROM 77 TO 96 MONTHS DOWN TO
12 70 TO 87 MONTHS, WHICH OVERLAPS.

13 MR. ROGERS: MAY I HAVE A MOMENT, YOUR HONOR?

14 THE COURT: SURE.

15 (WHEREUPON, THERE WAS A PAUSE WHILE MR. ROGERS CONFERRED
16 WITH DEFENDANT.)

17 MR. ROGERS: YOUR HONOR, MR. ROUNDTREE INDICATES
18 THAT HE WANTS TO GO FORWARD WITH THIS SENTENCING HEARING.

19 THE COURT: OKAY. ALL RIGHT. THEN TO THE EXTENT
20 YOU HAVE OBJECTED TO THE FAILURE OF THE GOVERNMENT TO MAKE
21 THE MOTION FOR THE THIRD LEVEL OF ACCEPTANCE, I OVERRULE YOUR
22 OBJECTION AND FIND THAT THERE'S NO EVIDENCE OF ANY BAD FAITH
23 MOTIVE ON THE PART OF THE GOVERNMENT AND THAT IN FACT THE
24 DEFENDANT WHO IS PRESERVING HIS RIGHT TO CHALLENGE THE
25 SUPPRESSION OF THE WEAPON THAT IS THE BASIS FOR THE CHARGE

1 CANNOT BE SAID TO BE ENTITLED TO THE THIRD LEVEL OFF FOR
2 ACCEPTANCE OF RESPONSIBILITY. OKAY?

3 SO, ARE THERE ANY OTHER OBJECTIONS?

4 MR. ROGERS: NO, YOUR HONOR.

5 THE COURT: ALL RIGHT. THEN THE COURT WILL ADOPT
6 THE FACTUAL STATEMENTS IN THE PRESENTENCE REPORT AS ITS
7 FINDINGS OF FACT. WE HAVE A TOTAL OFFENSE LEVEL OF 22,
8 CRIMINAL HISTORY CATEGORY OF FIVE. GUIDELINE RANGE IS 77 TO
9 96 MONTHS IMPRISONMENT. SUPERVISED RELEASE RANGE IS ONE TO
10 THREE YEARS. SPECIAL ASSESSMENT FEE IS \$100.

11 DO YOU AGREE THAT BASED ON MY RULING THOSE ARE THE
12 CORRECT GUIDELINES?

13 MR. ROGERS: YES, YOUR HONOR.

14 THE COURT: AND MS. SMITH, DO YOU AGREE?

15 MS. SMITH: YES, YOUR HONOR.

16 THE COURT: OKAY. ALL RIGHT. THE PROBATION OFFICE
17 IS RECOMMENDING A SENTENCE OF 77 MONTHS, WHICH IS THE BOTTOM
18 END OF THE GUIDELINE RANGE, FOLLOWED BY A THREE-YEAR TERM OF
19 SUPERVISED RELEASE.

20 SO, I WILL BE GLAD TO HEAR WHAT YOU WOULD LIKE TO SAY AS
21 TO THE SENTENCE TO BE IMPOSED.

22 MR. ROGERS: THANK YOU, YOUR HONOR. MAY IT PLEASE
23 THE COURT. MR. ROUNDTREE IS 27 YEARS OLD. HE WAS BORN IN
24 COLUMBIA. HE'S NOT MARRIED AND HE HAS TWO CHILDREN, AGES
25 EIGHT AND SIX. HE DOESN'T HAVE A HIGH SCHOOL DIPLOMA NOR

1 DOES HE HAVE A GED, BUT HE DOES HAVE CERTIFICATES IN
2 VETERINARIAN AND AUTOMOTIVE TECHNOLOGIES. HE'S BEEN
3 UNEMPLOYED SINCE NOVEMBER OF LAST YEAR. HOWEVER, HE HAS
4 WORKED AS A JANITOR THROUGH A TEMP SERVICE AND A LABORER AND
5 HE WAS A COOK AT MCDONALDS.

6 YOUR HONOR, ALTHOUGH THIS IS A SERIOUS OFFENSE, THERE
7 WAS NOTHING VIOLENT OR EGREGIOUS ABOUT HIS ARREST. YOU SAW
8 THE BODY CAM THAT OUTLINED THE ENTIRE PROCEDURE. AS YOU WILL
9 RECALL, HE WAS A PASSENGER IN A CAR THAT WAS STOPPED FOR A
10 TRAFFIC VIOLATION. AFTER FINDING DRUGS AND AMMUNITION THAT
11 WERE NOT RELATED TO HIM, HE WAS SEARCHED AND DRUGS AND A GUN
12 WAS FOUND AND A SMALL AMOUNT OF DRUGS.

13 YOUR HONOR, I WOULD ASK YOU TO CONSIDER, BASED ON THE
14 3553(A) FACTORS, GOING BELOW THE 77-MONTH RANGE BASED ON HIS
15 AGE, THE FACT THAT HE DOESN'T HAVE SERIOUS VIOLENCE IN HIS
16 PAST, AND THAT THERE WAS NOTHING VIOLENT ABOUT THIS
17 PARTICULAR OFFENSE. I BELIEVE HIS MOTHER IS IN COURT AND SHE
18 WOULD LIKE TO ADDRESS YOU.

19 THE COURT: ALL RIGHT. COME UP HERE. WE WILL HAVE
20 YOU SPEAK AT THE MICROPHONE, PLEASE.

21 MS. MILLIGAN: PARDON MY DRESS. I HAD TO GET ON
22 THE ROAD. I LIVE IN ATLANTA.

23 THE COURT: OH, MY GOODNESS. WHAT'S YOUR NAME?

24 MS. MILLIGAN: MY NAME IS WANDA MILLIGAN.

25 THE COURT: ALL RIGHT.

1 MS. MILLIGAN: AND AS HE SAID, I AM HIS MOTHER.
2 HE'S HAD SOME CHALLENGES. HE HAS TWO CHILDREN. XXXXXX IS
3 EIGHT, XXXXXXXX IS SIX. I HAVE CUSTODY OF XXXXXXXX. AND I
4 MYSELF HAVE HAD TO SERVE SOME TIME FOR THE FEDERAL
5 GOVERNMENT. DURING MY INCARCERATION HE WAS VERY YOUNG AND I
6 LEFT HIM IN THE CARE OF MY MOTHER WHO WAS A STRICT
7 DISCIPLINARIAN IF I CAN SAY THAT.

8 HE RAN AWAY A LOT NOT UNDERSTANDING WHY I LEFT BECAUSE I
9 DIDN'T TELL THEM. THEN CAME HOME FROM SCHOOL ONE DAY AND I
10 WASN'T THERE. SO I HAD TO EXPLAIN OVER THE PHONE WHAT WAS
11 GOING ON. I WAS GONE FOR ALMOST SIX YEARS. AND SINCE BEING
12 HOME, I HAVE MADE A LIFE IN ATLANTA, GEORGIA. I WORK FOR
13 ARTHUR BLANKS AT THE MERCEDES BENZ STADIUM WHERE I HAVE BEEN
14 THERE FOR THE PAST THREE YEARS. PRIOR TO THAT I WAS A BAR
15 MANAGER AT A CLUB IN ATLANTA, DECIDED TO MOVE ON TO SOMETHING
16 MORE, YOU KNOW, RESPECTABLE, IF YOU MUST SAY.

17 HE DID -- LIKE I SAID, HE CAME TO ATLANTA. HE WAS DOING
18 GREAT. HE HAS LEADERSHIP CAPABILITIES, BUT UNFORTUNATELY THE
19 PAST FEW YEARS HE'S DECIDED TO BE A FOLLOWER BECAUSE WHEN HE
20 CAME TO ATLANTA, HE DID EXCELLENT. I DIDN'T KNOW I COULD
21 SEND PAPERWORK IN BECAUSE, LIKE I SAID, I WAS ANGRY WITH HIM
22 FOR GETTING HIMSELF BACK IN TROUBLE BECAUSE HE WAS DOING SO
23 WELL.

24 AND I'M NOT GOING TO BORE THE COURT WITH MY LONG,
25 DRAWN-OUT STORIES, BUT HE IS A GOOD KID. HE HAS HAD SOME BAD

1 CHOICES DOWN THE ROAD, AND FOR THAT HE NEEDS TO BE
2 REPRIMANDED. BUT I'M ASKING YOUR HONOR TO PLEASE SHOW SOME
3 LENIENCY BECAUSE HE IS REALLY -- HE'S A GOOD KID. HE -- I
4 MEAN, NO MOTHER WANTS TO SEE DISCIPLINE A CHILD ESPECIALLY
5 WHEN YOU HAVE BEEN THERE.

6 AND I DID HOPE AND PRAY THAT MY ISSUES WOULD HAVE SHOWN
7 THEM IF AN EDUCATED WOMAN AS MYSELF -- I HAVE A BACHELOR'S
8 DEGREE AND AM WORKING ON MY MASTER'S AT GEORGIA STATE
9 UNIVERSITY. SO, IF I CAN COME HOME, WALK THE RIGHT PATH AND
10 BE SUCCESSFUL DOING IT, YOU CAN, TOO. SO I JUST, YOU KNOW,
11 PLACE HIM ON THE MERCY OF THE COURT AND ASK THAT YOUR HONOR,
12 YOU KNOW, SHOW SOME LENIENCY.

13 NO WAY, SHAPE, OR FORM SHOULD HE GET A SLAP ON THE WRIST
14 AND WALK AWAY, BUT HIS -- HIS SONS -- HE HAVE TWO BOYS, AND
15 HE'S A GOOD FATHER. HE'S A GOOD FATHER, AND HE NEEDS
16 GUIDANCE, YOU KNOW. HE NEEDS GUIDANCE. AND BEING HERE AND
17 NOT THERE, TO ME I FELT LIKE IT WAS MY DOWNFALL. I SHOULD
18 HAVE MADE HIM STAY. I SHOULD HAVE CAME AND GOT HIM. BUT
19 WOULD HAVE, COULD HAVE, SHOULD HAVE. RIGHT NOW WE ARE
20 WORKING ON HELPING HIM TO BE A SUCCESSFUL CITIZEN. THANK
21 YOU.

22 THE COURT: THANK YOU FOR COMING. MR. ROGERS?

23 MR. ROGERS: YOUR HONOR, THAT'S ALL WE HAVE.

24 THE COURT: ALL RIGHT. MR. ROUNDTREE, IS THERE
25 ANYTHING YOU WOULD LIKE TO SAY?

1 THE DEFENDANT: NO, YOUR HONOR.

2 THE COURT: ALL RIGHT. MS. SMITH?

3 MS. SMITH: THANK YOU, YOUR HONOR. THE GOVERNMENT
4 REQUESTS 96 MONTHS, YOUR HONOR; THE TOP END OF THE
5 GUIDELINES. YOUR HONOR, THERE ARE SEVERAL REASONS FOR THAT
6 REQUEST. YOUR HONOR, THE DEFENDANT IS A DOCUMENTED AND
7 VALIDATED GANG MEMBER. HE IS A GANGSTA KILLA BLOOD. YOUR
8 HONOR, HE WAS IN THE VEHICLE WITH ANOTHER AFFILIATED GANG
9 MEMBER. THERE WERE 238 ROUNDS OF AMMUNITION. HE WAS
10 CARRYING A LOADED FIREARM ON HIS PERSON ALONG WITH CRACK,
11 MARIJUANA, AND XANAX.

12 YOUR HONOR, HE HAS A HISTORY OF VIOLENCE THAT'S FIRST
13 NOTED AT THE AGE OF 13. HIS CRIMINAL HISTORY GOES FROM 2005
14 TO THE PRESENT. YOUR HONOR, HE'S CONSISTENTLY ENGAGED IN
15 CRIMINAL ACTIVITY. HIS CRIMINAL HISTORY SPANS 14 YEARS.
16 YOUR HONOR, THE DEFENDANT IS ONLY 27 YEARS OLD. HE WAS ON
17 PROBATION AT THE TIME OF THIS OFFENSE AND HE HAS BEEN
18 ARRESTED SINCE THIS OFFENSE.

19 ON THE DAY OF GRAND JURY -- THAT THIS CASE ORIGINALLY
20 WENT TO THE GRAND JURY, HE WAS ARRESTED ON ANOTHER OFFENSE
21 OUT OF COLUMBIA. YOUR HONOR, WE BELIEVE THAT THE TOP RANGE
22 OF THE GUIDELINES WOULD REFLECT THE SERIOUSNESS OF THE
23 OFFENSE AND PROMOTE RESPECT FOR THE LAW AND PROVIDE JUST
24 PUNISHMENT TO THE OFFENSE, YOUR HONOR, BUT WOULD NOT BE A --
25 GREATER THAN NECESSARY TO COMPLY WITH THESE FACTORS.

1 YOUR HONOR, I THINK THE FACT THAT HE WAS ON PAROLE IN
2 2018 AND LESS THAN A YEAR LATER HE ENDED UP IN THIS
3 SITUATION, YOUR HONOR, FLIES IN THE FACE OF ANY RESPECT FOR
4 THE LAW OR WHAT WE'RE DOING HERE. HE HAS SPENT FOUR TO FIVE
5 YEARS IN PRISON ALREADY. THAT DID NOT DETER HIS BEHAVIOR.
6 YOUR HONOR, WE RESPECTFULLY ASK FOR THAT TOP END OF THE
7 GUIDELINE AT 96 MONTHS.

8 *THE COURT:* ALL RIGHT. THANK YOU. ALL RIGHT.
9 MR. ROGERS?

10 *MR. ROGERS:* YOUR HONOR, THE ONLY THING I WANT TO
11 RESPOND TO IS WITH REGARD TO THE AMMUNITION FOUND IN THE CAR.
12 IT'S CLEAR THAT THE AMMUNITION WAS NOT CONNECTED TO HIM AND
13 IT WAS NO EVIDENCE THAT HE KNEW THAT THE AMMUNITION WAS IN
14 THE CAR. IT WAS IN THE TRUNK IN A BOX AND, OF COURSE, HE HAD
15 GOTTEN A RIDE WITH THIS OTHER WOMAN WHO WAS DRIVING THE CAR.

16 *THE COURT:* ALL RIGHT. I'M GOING TO IMPOSE A
17 SENTENCE OF 77 MONTHS AS THE PROBATION OFFICE HAS
18 RECOMMENDED. I AGREE WITH THE PROBATION OFFICE THAT THAT IS
19 A SENTENCE THAT IS SUFFICIENT BUT NOT GREATER THAN NECESSARY
20 TO ACHIEVE THE PURPOSES OF SENTENCING.

21 EVEN IF THE OFFENSE LEVEL WERE A 21, HAVING RECEIVED
22 THREE LEVELS OFF FOR ACCEPTANCE OF RESPONSIBILITY, I WOULD
23 STILL GIVE THE SAME SENTENCE, WHICH WOULD BE 77 MONTHS, WHICH
24 WOULD BE IN THE LOWER GUIDELINE RANGE OF 70 TO 87 MONTHS.

25 SO, A 77-MONTH SENTENCE APPEARS TO ME TO BE THE CORRECT

1 SENTENCE IN THIS CASE. I HAVE CONSIDERED THE NATURE AND
2 CIRCUMSTANCES OF THE OFFENSE, WHICH IS A FELON IN POSSESSION
3 CASE WITH A GUN ON HIS PERSON ALONG WITH SOME DRUGS WHILE HE
4 WAS ON PROBATION.

5 HE IS 27 YEARS OLD, SINGLE WITH TWO CHILDREN, SEEMS TO
6 HAVE A SUBSTANCE ABUSE ISSUE BUT DOES NOT SEEK TREATMENT. HE
7 IS AN ADMITTED AND DOCUMENTED GANGSTA KILLA BLOOD MEMBER. HE
8 DOES NEED A GED AND HE DOES APPARENTLY HAVE SOME TRAINING IN
9 AUTO TECHNOLOGY AND VETERINARY WORK, BUT DEFINITELY NEEDS A
10 GED AND DEFINITELY NEEDS SOME SKILLS.

11 SO, THE COURT HAS CONSIDERED THOSE FACTORS AS WELL AS
12 THE NEED FOR THE SENTENCE IMPOSED TO REFLECT SERIOUSNESS OF
13 THE OFFENSE, PROMOTE RESPECT FOR THE LAW, PROVIDE JUST
14 PUNISHMENT, ADEQUATE DETERRENCE, AND PROTECT THE PUBLIC FROM
15 FURTHER CRIMES AS WELL AS TO PROVIDE HIM WITH SOME
16 EDUCATIONAL AND VOCATIONAL TRAINING, AND AFTER DETERMINING
17 ALL OF THOSE FACTORS AND CONSIDERING THEM ALL HAS DETERMINED
18 THAT A SENTENCE OF 77 MONTHS IS SUFFICIENT BUT NOT GREATER
19 THAN NECESSARY TO ACHIEVE THE PURPOSES OF SENTENCING.

20 THEREFORE, MR. ROUNDTREE, IT IS THE JUDGMENT OF THE
21 COURT THAT YOU, JUSTICE TOWAN ROUNDTREE, ARE HEREBY COMMITTED
22 TO THE CUSTODY OF THE BUREAU OF PRISONS TO BE IMPRISONED FOR
23 A TERM OF 77 MONTHS. YOU'RE ALSO ORDERED TO FORFEIT YOUR
24 INTEREST IN PROPERTY AS DIRECTED IN THE PRELIMINARY ORDER OF
25 FORFEITURE PREVIOUSLY FILED IN THIS CASE AND THAT ORDER IS

1 INCORPORATED HEREIN AS PART OF THIS JUDGMENT.

2 IT APPEARS YOU DO NOT HAVE THE ABILITY TO PAY A FINE AND
3 SO THE FINE IS WAIVED, BUT YOU MUST PAY THE MANDATORY \$100
4 SPECIAL ASSESSMENT FEE DUE AND PAYABLE IMMEDIATELY.

5 WHEN YOU ARE RELEASED, YOU MUST BE PLACED ON SUPERVISED
6 RELEASE FOR THREE YEARS. WITHIN 72 HOURS OF YOUR RELEASE YOU
7 WILL BE REQUIRED TO REPORT IN PERSON TO THE PROBATION OFFICE
8 WHERE YOU'RE RELEASED. WHILE YOU'RE ON SUPERVISION, YOU WILL
9 BE REQUIRED TO COMPLY WITH ALL OF THE MANDATORY AND STANDARD
10 CONDITIONS OF SUPERVISION AND THE FOLLOWING SPECIAL
11 CONDITIONS.

12 YOU WILL BE REQUIRED TO SUBMIT TO SUBSTANCE ABUSE
13 TESTING TO DETERMINE IF YOU HAVE USED A PROHIBITED SUBSTANCE
14 AND, IF YOU'RE ABLE TO DO SO, TO CONTRIBUTE TO THE COST OF
15 THAT PROGRAM IN AN AMOUNT DETERMINED REASONABLE BY THE COURT
16 AND TO COOPERATE IN SECURING ANY THIRD-PARTY PAYMENT SUCH AS
17 INSURANCE OR MEDICAID.

18 ARE THERE ANY OBJECTIONS TO THE FORM OF THE SENTENCE,
19 MR. ROGERS?

20 MR. ROGERS: NO, YOUR HONOR.

21 THE COURT: MS. SMITH?

22 MS. SMITH: NO, YOUR HONOR.

23 THE COURT: MR. ROUNDTREE DID NOT WAIVE HIS RIGHT
24 TO CONTEST HIS CONVICTION OR SENTENCE IN THIS CASE, THEREFORE
25 HE HAS A RIGHT TO APPEAL. IN ORDER TO DO SO, AN APPEAL

1 NOTICE MUST BE FILED WITHIN 14 DAYS OF THE ENTRY OF THE
2 WRITTEN JUDGMENT ORDER IN YOUR CASE. MR. ROGERS WILL ADVISE
3 YOU OF THAT DEADLINE.

4 IF YOU AND HE DISAGREE ABOUT WHETHER AN APPEAL SHOULD BE
5 FILED, YOU MAY FILE YOUR OWN APPEAL, BUT IT MUST BE SUBMITTED
6 TO THIS COURT WITHIN THAT SAME 14-DAY PERIOD. AND IF YOU
7 AREN'T ABLE TO AFFORD THE SERVICES OF A LAWYER TO HANDLE THE
8 APPEAL, YOU MAY APPLY FOR COURT-APPOINTED COUNSEL FROM THE
9 COURT OF APPEALS. DO YOU UNDERSTAND?

10 THE DEFENDANT: YES, MA'AM.

11 THE COURT: DO YOU HAVE A REQUEST FOR WHERE YOU
12 WANT TO SERVE YOUR SENTENCE?

13 THE DEFENDANT: ATLANTA.

14 THE COURT: ATLANTA?

15 THE DEFENDANT: YES, YOUR HONOR.

16 THE COURT: OKAY. ALL RIGHT. I WILL RECOMMEND A
17 PLACE OF INCARCERATION IN THE ATLANTA AREA. I CAN'T
18 GUARANTEE YOU THEY'LL DO THAT, BUT THAT'S MY RECOMMENDATION.

19 MS. MILLIGAN: THANK YOU.

20 THE COURT: ALL RIGHT. I SAID THIS TO THE LAST
21 FELLOW, AND IT PROBABLY DOESN'T DO ANY GOOD. BUT THE HARD
22 PART OF THIS SENTENCE IS GOING TO BE THE THREE YEARS WHEN YOU
23 GET OUT. YOU'RE GOING TO BE ON SUPERVISION. YOU STICK WITH
24 THE GANGSTA KILLA BLOODS, YOU HAVE ZERO CHANCES OF MAKING IT
25 THROUGH SUPERVISION. YOU WILL GO BACK TO PRISON. IT'S A

1 GUARANTEE. DO YOU UNDERSTAND THAT?

2 *THE DEFENDANT:* YES, MA'AM.

3 *THE COURT:* SO TRY TO MAKE SOME CHANGES WHILE
4 YOU'RE THERE.

5 *THE DEFENDANT:* (NODDED.)

6 *THE COURT:* GOOD LUCK TO YOU.

7 *THE DEFENDANT:* THANK YOU.

8 *THE COURT:* ANY COUNTS TO BE DISMISSED?

9 *MS. SMITH:* YOUR HONOR, I BELIEVE THERE WAS AN
10 ORIGINAL INDICTMENT. HE PLED TO THE SUPERSEDING. THE
11 GOVERNMENT WOULD MOVE TO DISMISS THAT ORIGINAL INDICTMENT.

12 *THE COURT:* ALL RIGHT. OKAY. MA'AM, WHERE DID YOU
13 SERVE YOUR TIME?

14 *MS. MILLIGAN:* COLEMAN.

15 *THE COURT:* WHAT DID SHE SAY? COLEMAN? AT
16 COLEMAN? DID THEY GIVE YOU SOME VOCATIONAL TRAINING THERE?

17 *MS. MILLIGAN:* I ACTUALLY WENT -- I ACTUALLY WENT
18 IN WITH MY BACHELOR'S DEGREE.

19 *THE COURT:* OKAY. SO YOU DIDN'T NEED IT THEN.

20 *MS. MILLIGAN:* NO, MA'AM. I ACTUALLY HELPED THEM.

21 *THE COURT:* OKAY. ALL RIGHT. WELL, GOOD FOR YOU.

22 *MS. MILLIGAN:* AND I'VE BEEN HOME ALMOST 12 YEARS.

23 *THE COURT:* GOOD FOR YOU. WE DON'T SEE A LOT OF
24 SUCCESS STORIES HERE.

25 *MS. MILLIGAN:* THANK YOU.

1 MS. SMITH: THANK YOU.

2 THE COURT: ALL RIGHT. THANK Y'ALL.

3 (HEARING CONCLUDED.)

4 ***

5 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
6 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

7

8 S/KATHLEEN RICHARDSON

9 ----- JANUARY 15, 2020

10 KATHLEEN RICHARDSON, RMR, CRR

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