

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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**STANLEY JACKSON, III,**

Petitioner,

vs.

**UNITED STATES OF AMERICA,**

Respondent.

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**On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Sixth Circuit**

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**APPENDIX**

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*Counsel of Record*

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UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

No. 22-5185

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

STANLEY JACKSON, III,

Defendant - Appellant.

**FILED**  
Mar 10, 2023  
DEBORAH S. HUNT, Clerk

Before: MOORE, CLAY, and STRANCH, Circuit Judges.

**JUDGMENT**

On Appeal from the United States District Court  
for the Eastern District of Kentucky at Lexington.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs  
without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is  
AFFIRMED in its entirety.

**ENTERED BY ORDER OF THE COURT**



\_\_\_\_\_  
Deborah S. Hunt, Clerk

NOT RECOMMENDED FOR PUBLICATION  
File Name: 23a0124n.06

No. 22-5185

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, )  
Plaintiff-Appellee, )  
v. )  
STANLEY JACKSON, III, )  
Defendant-Appellant. )

**FILED**  
Mar 10, 2023  
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ON APPEAL FROM THE  
UNITED STATES DISTRICT  
COURT FOR THE EASTERN  
DISTRICT OF KENTUCKY

OPINION

Before: MOORE, CLAY, and STRANCH, Circuit Judges.

**CLAY, Circuit Judge.** Defendant Stanley Jackson, III, appeals from the district court's judgment of conviction and sentence for possession with intent to distribute methamphetamine and fentanyl, in violation of 21 U.S.C. § 841(a)(1), and for possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1). For the reasons that follow, we **AFFIRM** the district court's judgment.

**BACKGROUND**

In September 2021, Defendant pled guilty to possession with intent to distribute methamphetamine and fentanyl, in violation of 21 U.S.C. § 841(a)(1), and to possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1).

Defendant's presentence investigation report sets forth Defendant's criminal history. In 1986, Defendant was convicted of one count of robbery in the first degree in Fayette County, Kentucky. In 1998, Defendant was convicted of three counts of robbery in the first degree and two counts of complicity to commit robbery in the first degree, also in Fayette County. The 1998

No. 22-5185, *United States v. Jackson*

convictions for the five robberies were charged in the same indictment. Of these five robberies, two occurred on July 19, one on July 21, one on July 24, and one on July 25, all in 1998. The robberies occurred at five locations: Super America, Shell Food Mart, Bryan Avenue Liquor Store, Electro Services, and Chevron.

Based on these prior convictions, the presentence report classified Defendant as an armed career criminal, under 18 § U.S.C. 924(e)(1), because he had at least three convictions for violent felonies committed “on occasions different.” This finding raised Defendant’s total offense level under the Sentencing Guidelines to 31, under § 4B1.4(b)(3). The presentence report assigned Defendant 15 criminal history points, which corresponds to a criminal history category of VI. An offense level of 31 and a criminal history category of VI resulted in a Guidelines range of 188 to 235 months of imprisonment.

Defendant objected to the presentence report’s classification of him as an armed career criminal under 18 § U.S.C. 924(e)(1) and U.S.S.G. § 4B1.4(b)(3). He contended that his 1998 robbery convictions counted as only one predicate offense because they were committed in succession with no intervening arrests. The district court overruled Defendant’s objection. It determined that Defendant’s five 1998 robbery convictions each counted as a separate predicate offense because the robberies occurred on four different dates and at five different locations, and therefore were committed on different occasions.

Having overruled Defendant’s objection, the district court calculated the applicable Sentencing Guidelines range to be 188 to 235 months, as set forth in the presentence report. The district court sentenced Defendant to 225 months of imprisonment. Defendant timely appealed.

No. 22-5185, *United States v. Jackson*

## DISCUSSION

Defendant's total offense level derived from § 4B1.4, which provides an offense-level enhancement for defendants whose criminal history qualifies them as "armed career criminals." The Guidelines Manual's definition of "armed career criminal" incorporates a standard provided by statute. U.S.S.G. § 4B1.4(a). A defendant is an "armed career criminal" for § 4B1.4 purposes if he "is subject to an enhanced sentence under the provisions of 18 U.S.C. § 924(e)." *See id.* Section 924(e), in turn, subjects defendants convicted under § 922(g) to an enhanced mandatory minimum sentence of fifteen years if they previously have committed three or more violent felonies "on occasions different from one another." 18 U.S.C. § 924(e)(1). This case concerns the designation of offenses as committed "on occasions different" under § 924(e)(1), which determines whether a defendant is subject to § 4B1.4's offense level enhancement as an armed career criminal.

On appeal, Defendant challenges the district court's designation of Defendant as an armed career criminal. However, Defendant does not dispute the district court's determination that the five robberies of which he was convicted constitute violent felonies. Rather, for the first time, Defendant contends that the Constitution barred the district court from finding the facts needed to make the determination that his robberies occurred on different "occasions." *See* 18 U.S.C. § 924(e)(1). Thus, in Defendant's view, because the district court was barred from making these findings, the district court erred by designating Defendant an armed career criminal for purposes of calculating the applicable Sentencing Guidelines range.

Because Defendant raises this argument for the first time on appeal, we review it for plain error. *United States v. Vonner*, 516 F.3d 382, 385 (6th Cir. 2008) (en banc). To succeed on plain-error review, Defendant must prove: (1) there was an error (2) that was "clear or obvious" and

No. 22-5185, *United States v. Jackson*

(3) that affected his “substantial rights.” *Puckett v. United States*, 556 U.S. 129, 135 (2009). If he does so, we have discretion to remedy the error, but only if the error “seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.” *Id.* (quoting *United States v. Olano*, 507 U.S. 725, 736 (1993)). With this standard in mind, we turn to whether the district court plainly erred when it found the facts necessary to the occasions-different inquiry.

Under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), a judge may find the “fact of a prior conviction,” but all other “fact[s] that increase[] the penalty for a crime beyond the prescribed statutory maximum” must be included in the indictment and proved to a jury beyond a reasonable doubt. *Id.* at 490. Defendant argues that the factual findings necessary to the occasions-different inquiry fall under the *Apprendi* general rule, and therefore may only be found by a jury, and not by the sentencing judge.

However, this Court has previously held that the facts governing the occasions-different inquiry are included in “the fact of a prior conviction,” so they come within the *Apprendi* exception. *United States v. Burgin*, 388 F.3d 177, 186 (6th Cir. 2004). We have since reaffirmed this rule. *United States v. Williams*, 39 F.4th 342, 351 (6th Cir. 2022); *see also United States v. Belcher*, 40 F.4th 430, 432 (6th Cir. 2022); *see also United States v. Lovell*, No. 20-6287, 2023 WL 1879530, at \*3 (6th Cir. Feb. 10, 2023). The district court did not err—let alone plainly so—by applying this settled rule.

Resisting this conclusion, Defendant contends that this line of cases was wrongly decided and should be overturned. But a prior published panel decision “remains controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or this Court sitting en banc overrules the prior decision.” *Salmi v. Sec'y of Health & Human Servs.*, 774 F.2d 685, 689 (6th Cir. 1985). Defendant has identified no change in law that

No. 22-5185, *United States v. Jackson*

undermines our precedent on this question, and so we are bound by it. *Cf. Wooden*, 142 S. Ct. 1063, 1068 n.3 (2022) (declining to address whether the Sixth Amendment requires that a jury, rather than a judge, resolve whether prior crimes occurred on a single occasion).

## **CONCLUSION**

For the reasons stated above, we **AFFIRM** the judgment of the district court.

FILED

UNITED STATES DISTRICT COURT

Eastern District of Kentucky – Central Division at Lexington

FEB 28 2022

UNITED STATES OF AMERICA

v.

Stanley Jackson, III

JUDGMENT IN A CRIMINAL CASE

AT LEXINGTON  
ROBERT R. CARR  
CLERK U.S. DISTRICT COURT

Case Number: 5:21-CR-060-S-DCR-01  
USM Number: 47385-509  
John C. Helmuth  
Defendant's Attorney

**THE DEFENDANT:**

pleaded guilty to count(s) 1S, 4S, 6S [DE #24]

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:

Title & Section	Nature of Offense	Offense Ended	Count
21:841(a)(1)	Possession with Intent to Distribute 50 Grams or More of a Mixture or Substance Containing Methamphetamine	May 24, 2021	1S
21:841(a)(1)	Possession with Intent to Distribute a Mixture or Substance Containing a Detectable Amount of Fentanyl	May 24, 2021	4S
18:922(g)(1)	Possession of a Firearm by a Convicted Felon	May 24, 2021	6S

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) 2S, 3S, & 5S [DE #24] Original Indictment [DE #9]  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.

February 25, 2022

Date of Imposition of Judgment

Signature of Judge

Honorable Danny C. Reeves, Chief U.S. District Judge

Name and Title of Judge

February 28, 2022

Date

DEFENDANT: Stanley Jackson, III  
CASE NUMBER: 5:21-CR-060-S-DCR-01

## IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

**Two Hundred Twenty-Five (225) Months on each of Counts 1S, 4S, & 6S, to run concurrently,  
for a total term of TWO HUNDRED TWENTY-FIVE (225) MONTHS**

*(Term to run consecutively to Commonwealth of Kentucky, Fayette County Circuit Court Case Nos. 97-CR-1375-002,  
98-CR-1084-003, and 17-CR-593-002)*

- The court makes the following recommendations to the Bureau of Prisons:
  - That the defendant participate in a substance abuse treatment program.
  - That the defendant participate in a job skills and/or vocational training program.
  - That the defendant be designated to a facility closest to his home, for which he may qualify pursuant to section 601 of the First Step Act of 2018.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
  - at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_.
  - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
  - before 2 p.m. on \_\_\_\_\_.
  - as notified by the United States Marshal.
  - as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Stanley Jackson, III  
CASE NUMBER: 5:21-CR-060-S-DCR-01

## SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

**Eight (8) Years on Count 1S; Six (6) Years on Count 4S; and Five (5) Years on Count 6S, to run concurrently, for a total term of  
EIGHT (8) YEARS**

## MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
  - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(Check, if applicable.)*
4.  You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(Check, if applicable.)*
5.  You must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
6.  You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(Check, if applicable.)*
7.  You must participate in an approved program for domestic violence. *(Check, if applicable.)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Stanley Jackson, III  
CASE NUMBER: 5:21-CR-060-S-DCR-01

## STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

## U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_ Date \_\_\_\_\_

DEFENDANT: Stanley Jackson, III  
CASE NUMBER: 5:21-CR-060-S-DCR-01

### **SPECIAL CONDITIONS OF SUPERVISION**

1. You must abstain from the excessive use of alcohol.
2. You must refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing which is required as a condition of release.
3. You must submit your person, offices, properties, homes, residences, vehicles, storage units, papers, computers, other electronic communications or data storage devices or media, to a search conducted by a United States probation officer. Failure to submit to a search will be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.
4. You must not purchase, possess, use, distribute or administer any controlled substance or paraphernalia related to controlled substances, except as prescribed by a physician. Additionally, you may not use or consume marijuana, or marijuana products, even if such controlled substance were to be prescribed to you by a physician, licensed professional or other person.

DEFENDANT: Stanley Jackson, III  
CASE NUMBER: 5:21-CR-060-S-DCR-01

## CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
<b>TOTALS</b>	\$ 300.00 (\$100/Count)	\$ Community Waived	\$ Waived	\$ N/A	\$ N/A

The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
<b>TOTALS</b>	\$ _____	\$ _____	

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:

\* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

\*\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

\*\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Stanley Jackson, III  
CASE NUMBER: 5:21-CR-060-S-DCR-01

## SCHEDEULE 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 \$ 300.00 due immediately, balance due  
 not later than \_\_\_\_\_, or  
 in accordance with  C,  D,  E, or  F below; or

B  Payment to begin immediately (may be combined with  C,  D, or  F below); or

C  Payment in equal \_\_\_\_\_ (*e.g., weekly, monthly, quarterly*) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (*e.g., months or years*), to commence \_\_\_\_\_ (*e.g., 30 or 60 days*) after the date of this judgment; or

D  Payment in equal \_\_\_\_\_ (*e.g., weekly, monthly, quarterly*) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (*e.g., months or years*), to commence \_\_\_\_\_ (*e.g., 30 or 60 days*) after release from imprisonment to a term of supervision; or

E  Payment during the term of supervised release will commence within \_\_\_\_\_ (*e.g., 30 or 60 days*) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F  Special instructions regarding the payment of criminal monetary penalties:

Criminal monetary penalties are payable to:  
Clerk, U. S. District Court, Eastern District of Kentucky  
101 Barr Street, Room 206, Lexington, KY 40507

### INCLUDE CASE NUMBER WITH ALL CORRESPONDENCE

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Case Number

Defendant and Co-Defendant Names

*(including defendant number)*

Total Amount

Joint and Several Amount

Corresponding Payee, if appropriate

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:  
(1) Firearms International Corporation, revolver, .22 caliber, bearing serial number K37178; (2) Walther, pistol, Model: P22, pistol, .22 LR caliber, bearing serial number L235338; (3) Smith and Wesson, pistol, Model: M&P9x, 9mm caliber, bearing serial number DYA2815; (4) Smith and Wesson, pistol, Model: SW40VE, .40 caliber bearing serial number DTL2571; (5) HiPoint, Model C9, pistol, bearing serial number P1621491; (6) Helwan Maadi, pistol, Model: Cadet I, 9mm caliber, bearing serial number EP01088; (7) Cobra Enterprises, pistol, Model: FS380, .380 caliber, bearing serial number FS073987; (8) and Ammunition.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.