

No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2022

XAVIER DOMINIQUE GARRIS, Petitioner,

v.

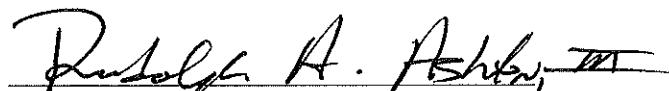
UNITED STATES OF AMERICA, Respondent

MOTION TO PROCEED IN FORMA PAUPERIS

Petitioner, Xavier Dominique Garris, by his undersigned counsel, requests leave to file a Petition for Writ of Certiorari without prepayment of costs and to proceed in forma pauperis pursuant to Rule 39 of the Supreme Court Rules. Counsel was appointed in the lower court pursuant to 18 U.S.C. § 3006 and Rule 44, Fed. R. CR. P.

This the 12th day of July, 2023.

Respectfully submitted,



RUDOLPH A. ASHTON, III
Panel Attorney,
Eastern District of North Carolina
N.C. State Bar No. 0125
Post Office Drawer 1389
New Bern, North Carolina 28563-1389
Telephone: (252) 633-3800
Email: RAshton@dunnpittman.com

No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2022

XAVIER DOMINIQUE GARRIS, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RUDOLPH A. ASHTON, III
Panel Attorney
Eastern District of North Carolina
North Carolina State Bar No. 0125
P.O. Drawer 1389
New Bern, North Carolina 28563-1389
Telephone: (252) 633-3800
Facsimile: (252) 633-6669
Email: RAshton@dunnpittman.com

QUESTION PRESENTED

- I. WHETHER, IN A CASE WHERE REHAIF ERROR OCCURRED, THE FOURTH CIRCUIT ERRED IN FAILING TO REMAND THE CASE TO THE DISTRICT COURT TO MAKE THE DETERMINATION WHETHER, BUT FOR THE REHAIF ERROR DURING THE PLEA COLLOQUY, THERE WAS A REASONABLE PROBABILITY THAT THE PETITIONER WOULD HAVE GONE TO TRIAL RATHER THAN PLEAD GUILTY.

TABLE OF CONTENTS

QUESTION PRESENTED.....	iii
TABLE OF CONTENTS	iv
INDEX TO APPENDIX.....	v
TABLE OF CASES AND STATUTES.....	vi
OPINION BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
PROCEDURAL HISTORY.....	3
STATEMENT OF FACTS	4
REASONS FOR GRANTING THE PETITION	6
I. IN A CASE WHERE <u>REHAIF</u> ERROR OCCURRED, THE FOURTH CIRCUIT ERRED IN FAILING TO REMAND THE CASE TO THE DISTRICT COURT TO MAKE THE DETERMINATION WHETHER, BUT FOR THE <u>REHAIF</u> ERROR DURING THE PLEA COLLOQUY, THERE WAS A REASONABLE PROBABILITY THAT THE PETITIONER WOULD HAVE GONE TO TRIAL RATHER THAN PLEAD GUILTY.....	6
CONCLUSION	12
CERTIFICATE OF SERVICE	13

INDEX TO APPENDIX

APPENDIX A –	Opinion of the Fourth Circuit Court of Appeals (filed April 14, 2023)
APPENDIX B –	Judgment
APPENDIX C –	Mandate
APPENDIX D –	Judgment, EDNC (5:17-CR-00395-D-1)
APPENDIX E –	Indictment
APPENDIX F –	18 U.S.C. § 922(g), Possession of Firearm by Felon
APPENDIX G –	Presentence Report – Petitioner’s Criminal History

TABLE OF CASES AND STATUTES

CASES

<u>Greer v. United States</u> , ____ U.S. ___, 141 S.Ct. 2090, 210 L. Ed. 2d 121 (2021)	6, 7
<u>Rehaif v. United States</u> , ____ U.S. ___, 139 S.Ct. 2191, 204 L.Ed.2d 594 (2019)	6
<u>United States v. Benamor</u> , 937 F. 3d 1182 (9 th Cir. 2019).....	9

STATUTES:

Title 18 U.S.C. § 922(g)(1)	6, 10
Title 21 U.S.C. § 841(a)(1)	6

PETITION FOR WRIT OF CERTIORARI

Petitioner Xavier Dominique Garris, respectfully prays this Court that a writ of certiorari issue to review the opinion of the United States Court of Appeals for the Fourth Circuit, issued on April 14, 2023, affirming his judgment and sentence.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit for which review is sought is United States v. Xavier Dominique Garris, No. 19-4542 (4th Cir., April 14, 2023). The opinion is unpublished. The opinion of the United States Court of Appeals for the Fourth Circuit is reproduced in the Appendix to this petition as Appendix A. The judgment is reproduced as Appendix B. The mandate is reproduced as Appendix C. A copy of the district court judgment for the Eastern District of North Carolina wherein Garris was sentenced to 162 months imprisonment is reproduced as Appendix D. A copy of the Petitioner's criminal history is reproduced as Appendix G.

JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Fourth Circuit was issued on April 14, 2023. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

On December 12, 2017, Xavier Garris was named in a three count Indictment filed in the Eastern District of North Carolina. Count One charged him with possession of a firearm by felon, Count Two charged him with possession with the intent to distribute a quantity of marijuana, and Count Three charged him with possessing a firearm in furtherance of a drug trafficking crime, all offenses occurring on or about May 20, 2017. (Appendix E). This appeal concerns Rehaif error under Count One, possession of a firearm by felon in violation of 18 U.S.C. § 922(g)(1). (Appendix F).

STATEMENT OF THE CASE

Procedural History

On December 12, 2017, Xavier Garris was named in a three count Indictment filed in the Eastern District of North Carolina. Count One charged him with possession of a firearm by felon, Count Two charged him with possession with intent to distribute a quantity of marijuana, and Count Three charged him with possessing a firearm in furtherance of a drug trafficking crime, all offenses occurring on or about May 20, 2017. (Appendix E).

On April 8, 2019, pursuant to a written plea agreement, Garris pled guilty to Counts One and Two of the Indictment. The Government agreed to dismiss Count Three of the Indictment at sentencing. The parties agreed to a sentence at the top of the applicable advisory guideline range, an upward adjustment of 4 levels for use of a firearm in connection with another felony offense, an upward adjustment of 2 levels for a stolen firearm, and a downward adjustment of 3 levels for acceptance of responsibility. The plea was accepted by the Court.

The case came on for sentencing at the July 16, 2019 term of court before the Honorable James C. Dever, III, judge presiding. The Court found the Petitioner to be a career offender, and calculated a total offense level of 27, a criminal history category of VI, and a guideline imprisonment range of 130 to 162 months. Judge Dever sentenced Garris to a term of 162 months imprisonment, and 3 years of supervised release. Counsel filed notice of appeal on behalf of Garris on July 26, 2019.

In an opinion filed on April 14, 2023, the Fourth Circuit affirmed Petitioner's firearm by felon conviction and dismissed his sentencing issues based upon the appeal waiver in the plea agreement. (Appendix A).

Statement of Facts

This case arose on May 20, 2017, when officers from the Fayetteville Police Department executed a traffic stop on a speeding vehicle on Ireland Road in Fayetteville, North Carolina. Xavier Garris was operating the vehicle and got out of the vehicle. When he was instructed to get back into the car, Garris ran into a nearby wooded area and was apprehended shortly thereafter.

A search of the vehicle revealed 77 grams of marijuana, a stolen 40 caliber handgun loaded with ammunition, assorted drug paraphernalia, and U.S. currency. Based on the investigation, Garris was found to have several prior state felony convictions.

In computing the Petitioner's criminal history, he had several felony convictions of 6 to 17 months custody for which he only served six months, and therefore contended they were not punishable by more than one year due to the North Carolina sentencing scheme. He was found to be a career offender based in part upon a possession with intent to sell and deliver marijuana, where he received one of the aforementioned 6 to 17 month sentences. He was also found to be a career offender based upon a conviction of possession with intent to sell and deliver marijuana on April 5, 2017, for which he received a sentence of 14 to 24 months,

which was suspended, and he was placed on 18 months probation. That probation was revoked on August 14, 2017, as a result of the instant offense.

After negotiating a plea agreement, Garris went to court on April 8, 2019 and pled guilty to Counts One and Two of the Indictment. On the Count One firearm by felon charge, Petitioner was not advised that the Government had to prove that he knew that he had been convicted of a crime punishable by a term of imprisonment exceeding one year.

On June 21, 2019, the United States Supreme Court entered its decision in Rehaif v. United States, ___ U.S. ___, 139 S.Ct. 2191, 204 L.Ed.2d 594 (2019). In Rehaif the Supreme Court held that the Government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm. The Indictment in the instant case failed to allege the element that the defendant knew he had been convicted of a crime punishable by imprisonment for a term exceeding one year, and, as aforementioned, Garris had not been advised at his arraignment of said element.

On July 16, 2019, Garris appeared before Judge Dever for sentencing. Nothing was mentioned by the Court, the Government, nor counsel about the Rehaif decision or its impact on Mr. Garris. Nor was he offered the opportunity to withdraw his guilty plea based on this change in circumstances. The case proceeded to sentencing and the Petitioner was determined to be a career offender and sentenced at the top of the guideline range pursuant to the plea agreement.

During the appeal, the Supreme Court decided Greer v. United States, ____ U.S. ___, 141 S.Ct. 2090, 210 L. Ed. 2d 121 (2021).

Further facts will be developed during the argument portion of this petition.

REASONS FOR GRANTING THE PETITION

- I. IN A CASE WHERE REHAIF ERROR OCCURRED, THE FOURTH CIRCUIT ERRED IN FAILING TO REMAND THE CASE TO THE DISTRICT COURT TO MAKE THE DETERMINATION WHETHER, BUT FOR THE REHAIF ERROR DURING THE PLEA COLLOQUY, THERE WAS A REASONABLE PROBABILITY THAT THE PETITIONER WOULD HAVE GONE TO TRIAL RATHER THAN PLEAD GUILTY.

This is a case where Rehaif error clearly occurred. And it is a case where the decision in Rehaif v. United States, ____ U.S. ___, 139 S. Ct. 2191, 204 L. Ed. 2d 594, was entered after the Petitioner's arraignment and prior to the Petitioner's sentencing hearing. The basis of this petition is the failure of the Fourth Circuit to remand the case to the district court to make the determination whether, but for the Rehaif error during the plea colloquy, there was a reasonable probability that the Petitioner would have gone to trial rather than plead guilty.

On April 8, 2019, pursuant to a written plea agreement, Xavier Garris pled guilty to Counts One and Two of the Indictment. Count One charged him with possession of a firearm by felon in violation of 18 U.S.C. § 922(g)(1), and Count Two charged him with possession with intent to distribute a quantity of marijuana, in violation of 21 U.S.C. § 841(a)(1). The decision in Rehaif was entered on June 21, 2019. Petitioner's case came on for sentencing at the July 16, 2019 term of court in Raleigh, North Carolina before the Honorable James C. Dever, III.

At sentencing nothing was mentioned by the Court, the Government, nor defense counsel about the Rehaif decision or its possible impact on the Petitioner. Nor was the Petitioner offered the opportunity to withdraw his guilty plea based on this change in circumstances. Pursuant to the plea agreement he was sentenced to 162 months imprisonment. This consisted of a 120 month sentence on Count One, and a consecutive 42 month sentence on Count Two. (App. D-2).

Petitioner argued on appeal that he belonged to that class of individuals who was convicted of a prior crime but punished only by probation or less than one year, and therefore did not realistically know he was convicted of a crime *punishable* by imprisonment for a term exceeding one year. He further argued that the failure to be informed of all essential elements of the offense to which he pled guilty seriously affected the fairness, integrity, and public reputation of the judicial proceedings.

While this case was on appeal, the United States Supreme Court entered its opinion entitled Greer v. United States, ___ U.S. ___, 141 S. Ct. 2090, 210 L. Ed. 2d 121 (2021), which addressed the parameters of Rehaif error review.¹ Defendant Greer went to trial, and defendant Gary pled guilty. Both had multiple prior felonies. The Supreme Court in Greer held:

“In the two cases before us, all agree that *Rehaif* errors occurred during both defendants’ district court proceedings and that the errors were plain, thus satisfying the first two prongs of the plain-error test. We address the third prong: whether the *Rehaif* errors affected the defendants’ “substantial rights.” Greer has the burden of showing that, if the District Court had

¹ Before the Supreme Court decided Rehaif, Gregory Greer and Michael Gary were separately convicted of felon-in-possession offenses.

correctly instructed the jury on the *mens rea* element of a felon-in-possession offense, there is a “reasonable probability” that he would have been acquitted. *Dominguez Benitez*, 542 U.S. at 83, 124 S.Ct. 2333. And Gary has the burden of showing that, if the District Court had correctly advised him of the *mens rea* element of the offense, there is a “reasonable probability” that he would not have pled guilty.”

141 S. Ct. at 2097.

Since Xavier Garris pled guilty, under Greer he “has the burden of showing that, if the district court had correctly advised him of the *mens rea* element of the offense, there is a “reasonable probability” that he would not have pled guilty.”

The Fourth Circuit recognized this in its opinion, but found that Petitioner Garris had not shown a “reasonable probability that the outcome of the district court proceeding would have been different” absent the Rehaif error. (App. A-4). The Fourth Circuit opinion referenced Petitioner’s eleven felonies in North Carolina state court, and that he received a suspended sentence of 14 to 24 months imprisonment for some of those felony convictions. (App. A-3). However, those basic facts are misleading. Garris was relatively young when he pled guilty to his prior offenses, received suspended sentences for some of his prior felonies, and he had never served more than one year in prison for any felony conviction prior to his conduct in this case. Also, he only went to state court twice for his eleven prior felonies.

On February 6, 2014, he pled guilty to seven of those cases occurring while he was ages 18, 19 and 20. All of the sentences were either 6 to 8 months or 6 to 17 months. (App. G-1-3). Some judgments were consolidated. The longest sentence

appears to be a nearly 8 month sentence from February 6, 2014 to September 28, 2014. (App. G-2-3).

On April 5, 2017, Petitioner went to state court on the other four felony cases. He received a sentence of 14 to 24 months, suspended with 18 months probation, and 7 days active custody. (App. G-4-5). The instant offense occurred on May 20, 2017. Petitioner's probation was revoked on August 14, 2017, based upon the instant federal offenses. (App. G-4-5). While he served the 14 month active sentence, that sentence did not begin until after the instant offense occurred. Therefore, at the time the instant offense was committed, there was a reasonable probability that he did not realistically know he was convicted of a crime *punishable* by imprisonment for a term exceeding one year. Also, at the time of his arraignment in federal court, the Petitioner may not have realized that the 14 month sentence counted because at the time of the federal offense his probation had not been revoked.

The Fourth Circuit opinion cites United States v. Benamor, 937 F. 3d 1182 (9th Cir. 2019), which held that the defendant could not show that Rehaif error affected his substantial rights where he had a prior felon-in-possession conviction in state court. (App. A-3). Benamor was a California case. When defendant Benamor possessed the shotgun, he had been convicted of seven felonies in California state court, including three felonies for which sentences of more than one year in prison were actually imposed on him. Additionally, the felonies included one case in which Benamor sustained convictions for being a felon in possession of a firearm and a

felon in possession of ammunition, and he was sentenced to 5 years and 8 months in prison. It was further noted that Benamor spent more than 9 years in prison on his various felony convictions before his arrest for possessing a shotgun. 937 F. 3d at 1189. The facts in the instant case are clearly different from the facts in Benamor. While Xavier Garris did plead guilty to a possession of a firearm by felon case on April 5, 2014, his 14 to 24 month sentence was suspended and he was placed on 18 months probation. That particular sentence did not begin until after the federal offense was committed on May 20, 2017. As previously indicated, based upon the instant federal case, Petitioner's 18 month probation was revoked and he began to serve the 14 month sentence on August 14, 2017.

It should also be noted that 18 U.S.C. § 922(g)(1) makes it unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year to possess a firearm. (App. F). The statute does not use the word "felon". And there are some misdemeanors in some states punishable by more than one year that may violate the above statute. Therefore it would not be unreasonable for Petitioner Garris to not know of his prohibited status when he possessed the firearm.

The Supreme Court in Greer stated that there may be cases in which a defendant who is a felon can make an adequate showing on appeal that he would have presented evidence in the district court that he did not in fact know he was a felon when he possessed firearms. 141 S. Ct. at 2097. Xavier Garris was denied the opportunity to make such a showing because he was never advised by the court or

counsel that the Rehaif opinion had been entered and that it significantly affected the elements of his case.

In her concurring/dissenting opinion in Greer, Justice Sotomayor noted that the Supreme Court in Rehaif recognized that a person who was convicted of a prior crime but sentenced only to probation [may] not know that the crime [was] *punishable* by imprisonment for a term exceeding one year. 141 S.Ct. at 2103. She agreed that defendant Gary was not entitled to automatic relief. However, she believed that he was entitled to a remand to make a case-specific showing that the error affected his substantial rights, and therefore dissented from the judgment as to Gary. 141 S.Ct. at 2104. Xavier Garris contends that Justice Sotomayor's position clearly applies to him.

The Rehaif decision came down between Petitioner's arraignment and his sentencing hearing. Had he been provided the information regarding the change in essential elements, he would have had an opportunity to withdraw his guilty plea, reneogtiate another plea, or go to trial. Unfortunately, the errors that occurred in his case prevented him from engaging in the calculus necessary to enter an informed plea. The Fourth Circuit should have remanded this case to the district court to make the determination whether, but for the Rehaif error, there was a reasonable probability that the Petitioner would have gone to trial rather than plead guilty.

CONCLUSION

For the foregoing reasons, Petitioner Xavier Dominique Garris respectfully requests that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Fourth Circuit affirming his judgment and sentence.

This the 12th day of July, 2023.

DUNN, PITTMAN, SKINNER & ASHTON, PLLC
Counsel for Petitioner Xavier Dominique Garris

By:



RUDOLPH A. ASHTON, III

Panel Attorney

Eastern District of North Carolina

North Carolina State Bar No. 0125

3230 Country Club Road

Post Office Drawer 1389

New Bern, NC 28563

Telephone: (252) 633-3800

Facsimile: (252) 633-6669

Email: RAshton@dunnpittman.com

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2022

XAVIER DOMONIQUE GARRIS, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent

ENTRY OF APPEARANCE

and

CERTIFICATE OF SERVICE

I, Rudolph A. Ashton, III, a member of the North Carolina State Bar, having been appointed to represent the Petitioner in the United States Court of Appeals for the Fourth Circuit, pursuant to the provisions of the Criminal Justice Act, 18 U.S.C. § 3006A, hereby enter my appearance in this Court in respect to this Petition for a Writ of Certiorari.

I, Rudolph A. Ashton, III, do swear or declare that on this date, the 12th day of July, 2023, pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached motion for leave to proceed *in forma pauperis* and petition for a writ of certiorari on each party to the above proceeding, or that party's counsel, and on every other person required to be served by depositing in an envelope containing the

above documents in the United States mail properly addressed to each of them and with first-class postage prepaid. The names and addresses of those served are as follows:

David A. Bragdon, AUSA
Office of the United States Attorney
Eastern District of North Carolina
150 Fayetteville Street, Suite 2100
Raleigh, NC 27601

Solicitor General of the United States
Room 5616, Department of Justice
950 Pennsylvania Ave., N.W.
Washington DC 20530-0001

This the 12th day of July, 2023.

Respectfully submitted,

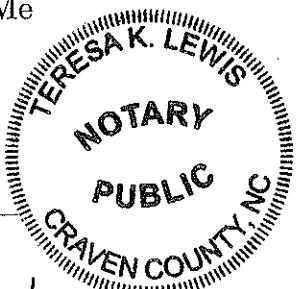

RUDOLPH A. ASHTON, III
Panel Attorney,
Eastern District of North Carolina
N.C. State Bar No. 0125
Post Office Drawer 1389
New Bern, North Carolina 28563
Telephone: (252) 633-3800
Facsimile: (252) 633-6669
Email: RAshton@dunnppittman.com

Subscribed and Sworn to Before Me

This the 12th day of July, 2023.


Teresa K. Lewis
Notary Public

My Commission Expires: 03/19/2024



APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4542

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

XAVIER DOMINIQUE GARRIS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (5:17-cr-00395-D-1)

Submitted: September 29, 2022

Decided: April 14, 2023

Before GREGORY, Chief Judge, and KING and QUATTLEBAUM, Circuit Judges.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

ON BRIEF: Rudolph A. Ashton, III, DUNN PITTMAN SKINNER & CUSHMAN, PLLC, New Bern, North Carolina, for Appellant. G. Norman Acker, III, Acting United States Attorney, David A. Bragdon, Assistant United States Attorney, Lucy Partain Brown, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Xavier Dominique Garris pled guilty, pursuant to a written plea agreement, to possession of a firearm after having been convicted of a crime punishable by imprisonment for a term exceeding one year, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2) (2018), and possession with intent to distribute marijuana, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(D). The district court sentenced Garris to 162 months' imprisonment. On appeal, Garris challenges his § 922(g)(1) conviction in light of *Rehaif v. United States*, 139 S. Ct. 2191 (2019). He also argues that the district court made various errors in calculating his Sentencing Guidelines range. We affirm in part and dismiss in part.

Garris first contends that his § 922(g)(1) conviction must be vacated in light of the Supreme Court's ruling in *Rehaif* because the district court accepted his guilty plea to that offense without informing him that the Government would be required to prove at trial that he knew of his prohibited status when he possessed the firearm. Because Garris did not present this contention to the district court, we review it for plain error only. *See United States v. Heyward*, 42 F.4th 460, 465 (4th Cir. 2022).

"In felon-in-possession cases after *Rehaif*, the Government must prove not only that the defendant knew he possessed a firearm, but also that he knew he was a felon when he possessed the firearm." *Greer v. United States*, 141 S. Ct. 2090, 2095 (2021) (emphasis omitted). "[A] *Rehaif* error is not a basis for plain-error relief unless the defendant first makes a sufficient argument or representation on appeal that he would have presented evidence at trial that he did not in fact know he was a felon." *Id.* at 2100. "When a defendant advances such an argument or representation on appeal, the [appellate] court

must determine whether the defendant has carried the burden of showing a reasonable probability that the outcome of the district court proceeding would have been different.” *Id.* (internal quotation marks omitted). Where, as here, a defendant has pled guilty to a § 922(g)(1) charge, the defendant has the burden of showing “that, but for the *Rehaif* error during the plea colloquy, there is a reasonable probability that he would have gone to trial rather than plead guilty.” *Id.* at 2098.

Garris argues that he might not have known that he had been convicted of a crime punishable by more than a year in prison when he possessed the firearm because he was relatively young when he pled guilty to his prior felony offenses, he received a suspended sentence for some of his prior felonies, and he had never served more than a year in prison for any felony conviction prior to his conduct in this case. Based upon our review of the record, however, we conclude that Garris’ argument is insufficient under *Greer*.

Prior to his possession of the firearm underlying the § 922(g)(1) offense, Garris had pled guilty to 11 felonies in North Carolina state court, and he received a suspended sentence of 14 to 24 months’ imprisonment for some of those felony convictions. *See United States v. Bryant*, 976 F.3d 165, 176 (2d Cir. 2020) (“Although [the defendant] served no actual time due to the suspended sentence, there is no reasonable probability that he was unaware that he could have served more than one year of imprisonment.”). Notably, about one month before committing the § 922(g)(1) offense, Garris pled guilty to possession of a firearm as a felon in North Carolina state court. *See United States v. Benamor*, 937 F.3d 1182, 1189 (9th Cir. 2019) (holding that defendant could not show that *Rehaif* error affected his substantial rights where he had prior felon-in-possession

conviction in state court). In light of those facts, Garris has not shown a “reasonable probability that the outcome of the district court proceeding would have been different” absent the *Rehaif* error. *Greer*, 141 S. Ct. at 2100 (internal quotation marks omitted). And because Garris has not established that the *Rehaif* error affected his substantial rights, we affirm his § 922(g)(1) conviction.*

Garris next claims that his trial counsel was ineffective for failing to advise him about the *Rehaif* errors in the indictment and the guilty plea colloquy prior to his sentencing hearing. This court does not consider ineffective assistance of counsel claims on direct appeal “[u]nless an attorney’s ineffectiveness conclusively appears on the face of the record.” *United States v. Faulls*, 821 F.3d 502, 507 (4th Cir. 2016). Because the face of the present record does not reveal that Garris’ trial counsel was ineffective, we decline to consider Garris’ claim. Garris’ claim should be presented, if at all, in a 28 U.S.C. § 2255 motion. *See United States v. Jordan*, 952 F.3d 160, 163 n.1 (4th Cir. 2020).

Garris also challenges his sentence, arguing that the district court made several errors in calculating his Guidelines range. The Government asserts that Garris’ challenges to his sentence are barred by the appeal waiver contained in the plea agreement and asks us to dismiss this appeal in part.

* In a letter filed pursuant to Fed. R. App. P. 28(j), Garris argues that he is entitled to relief from his § 922(g)(1) conviction under our recent decision in *Heyward*, where we vacated the defendant’s felon-in-possession conviction on plain-error review because of a *Rehaif* error. 42 F.4th at 471. But *Heyward* is readily distinguishable from Garris’ case and does not support a vacatur of Garris’ § 922(g)(1) conviction.

Where the Government seeks to enforce an appeal waiver and has not breached the plea agreement, this court will enforce the waiver if it is valid and the issue being appealed falls within the waiver's scope. *United States v. Dillard*, 891 F.3d 151, 156 (4th Cir. 2018). Our review of the record reveals that the appeal waiver contained in Garris' plea agreement is valid and enforceable, as Garris entered it knowingly and voluntarily. *See United States v. Tate*, 845 F.3d 571, 574 n.1 (4th Cir. 2017). We are also satisfied that Garris' challenges to his sentence are within the appeal waiver's scope. Accordingly, we dismiss the sentencing aspect of this appeal.

We therefore affirm in part and dismiss in part. We also deny Garris' motions seeking leave to file pro se supplemental briefs. *See United States v. Cohen*, 888 F.3d 667, 682 (4th Cir. 2018) ("[A]n appellant who is represented by counsel has no right to file pro se briefs or raise additional substantive issues in an appeal."). 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 PART,
DISMISSED IN PART*

APPENDIX B

FILED: April 14, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4542
(5:17-cr-00395-D-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

XAVIER DOMINIQUE GARRIS

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed in part. The appeal is dismissed in part.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

APPENDIX C

FILED: May 8, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4542
(5:17-cr-00395-D-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

XAVIER DOMINIQUE GARRIS

Defendant - Appellant

M A N D A T E

The judgment of this court, entered April 14, 2023, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

APPENDIX D

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA) JUDGMENT IN A CRIMINAL CASE
v.)
XAVIER DOMINIQUE GARRIS)
Case Number: 5:17-CR-395-1-D
USM Number: 65474-056
Rosemary Godwin
Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1 and 2 of the Indictment

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
18 U.S.C. § 922(g)(1), 18 U.S.C. § 924(a)(2)	Felon in Possession of a Firearm	5/20/2017	1
21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(D)	Possession With Intent to Distribute a Quantity of Marijuana	5/20/2017	2

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.

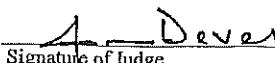
The defendant has been found not guilty on count(s) _____

Count(s) 3 of Indictment 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.

7/16/2019

Date of Imposition of Judgment


Signature of Judge

James C. Dever III, United States District Judge
Name and Title of Judge

7/16/2019

Date

DEFENDANT: XAVIER DOMINIQUE GARRIS
CASE NUMBER: 5:17-CR-395-1-D

IMPRISONMENT

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

Count 1: 120 months

Count 2: 42 months, to be served consecutively - (Total term: 162 months)

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

The court recommends that the defendant receive intensive substance abuse treatment and vocational and educational training opportunities. The court recommends that he serve his term in FCI Butner, North Carolina.

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: XAVIER DOMINIQUE GARRIS
CASE NUMBER: 5:17-CR-395-I-D

SUPERVISED RELEASE

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

Counts 1 and 2: 3 years per count, both such terms shall run concurrently - (Total term: 3 years)

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *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: XAVIER DOMINIQUE GARRIS
CASE NUMBER: 5:17-CR-395-1-D

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

DEFENDANT: XAVIER DOMINIQUE GARRIS
CASE NUMBER: 5:17-CR-395-1-D

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

The defendant shall not incur new credit charges or open additional lines of credit without approval of the probation office.

The defendant shall provide the probation office with access to any requested financial information.

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

The defendant shall consent to a warrantless search by a United States probation officer or, at the request of the probation officer, any other law enforcement officer, of the defendant's person and premises, including any vehicle, to determine compliance with the conditions of this judgment.

The defendant shall participate in a vocational training program as directed by the probation office.

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

DEFENDANT: XAVIER DOMINIQUE GARRIS
CASE NUMBER: 5:17-CR-395-1-D

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 Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$	\$	\$

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

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

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

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

TOTALS	\$ _____	0.00	\$ _____	0.00
---------------	----------	------	----------	------

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

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

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

DEFENDANT: XAVIER DOMINIQUE GARRIS
CASE NUMBER: 5:17-CR-395-1-D

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 \$ _____ 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:

The special assessment in the amount of \$200.00 shall be due in full immediately.

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

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

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.

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

The defendant shall forfeit the defendant's interest in the following property to the United States:

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.

APPENDIX E

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

NO. 5:17-CR-395-ID(1)

FILED IN OPEN COURT
ON 12-12-2017
Peter A. Moore, Jr., Clerk
US District Court
Eastern District of NC
JAF

UNITED STATES OF AMERICA

v.

XAVIER DOMINIQUE GARRIS

INDICTMENT

The Grand Jury charges that:

COUNT ONE

On or about May 20, 2017, in the Eastern District of North Carolina, the defendant, XAVIER DOMINIQUE GARRIS, having previously been convicted of a crime punishable by a term of imprisonment exceeding one (1) year, did knowingly possess in and affecting commerce, a firearm, in violation of Title 18, United States Code, Sections 922(g)(1) and 924.

COUNT TWO

On or about May 20, 2017, in the Eastern District of North Carolina, the defendant, XAVIER DOMINIQUE GARRIS, did knowingly and intentionally possess with the intent to distribute, a quantity of marijuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT THREE

On or about May 20, 2017, in the Eastern District of North Carolina, the defendant, XAVIER DOMINIQUE GARRIS, did knowingly possess a firearm in furtherance of a drug trafficking crime for which he may be prosecuted in a court of the United States, as alleged in Count Two of this Indictment, in violation of Title 18, United States Code, Section 924(c)(1)(A)(i).

(the rest of this page intentionally is left blank.)

ALLEGATIONS OF PRIOR CONVICTIONS

For purposes of Title 21, United States Code, Sections 841(b) and 851, the defendant, XAVIER DOMINQUE GARRIS, committed the violations alleged in the Indictment after at least one (1) prior conviction for a felony drug offense, as defined in Title 21, United States Code, Section 802(44), had become final.

(the rest of this page intentionally is left blank.)

FORFEITURE NOTICE

The defendant is given notice of the provisions of Title 18, United States Code, Section 924(d)(1), as made applicable herein by virtue of Title 28, United States Code, Section 2641(c), and Title 21, United States Code, Section 853, that all the defendant's interest in any property specified herein is subject to forfeiture.

As a result of the foregoing offenses in Counts One and Three, the defendant shall forfeit to the United States any firearm and ammunition involved in the offenses. As a result of the offense contained in Count Two, the defendant shall forfeit to the United States any and all property constituting, or derived from, any proceeds the defendant obtained directly or indirectly as a result of the said offense and any and all property used or intended to be used in any manner or part to commit or to facilitate the commission of the offense.

The forfeitable property includes but is not limited to:

- (a) \$777.00 in US Currency; and
- (b) A Taurus 24/7 Pro DS .40 pistol, serial number SCU76157, and associated ammunition.

If any of the above-described forfeitable property, as a result of any act or omission of the defendant's cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the

jurisdiction of the court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty; it is the intent of the United States, pursuant to Title 21 United States Code, Section 853(p), to seek forfeiture of any other property of said defendant up to the value of the forfeitable property described above.

A TRUE BILL

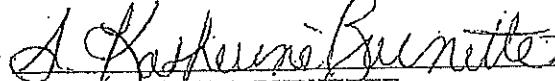
REDACTED VERSION

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

FOREPERSON

Date: 12 Dec 2017

ROBERT J. HIGDON, JR.
United States Attorney


S. KATHERINE BURNETTE
Assistant United States Attorney

partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment—

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

APPENDIX G

XAVIER DOMINIQUE GARRIS

Page 4 of 15

cellphones, and \$777 in U.S. currency (77.7 grams of marijuana)¹. Following his arrest, he declined to speak without the presence of his attorney.

9. Based on the investigation, **GARRIS**, a convicted felon, is accountable for unlawfully possessing a stolen firearm, after sustaining two felony convictions for either a crime of violence or a controlled substance offense. The defendant also possessed the firearm while in possession of 77 grams of marijuana, 1 gram of MDMA, and \$777 in U.S. currency. On April 22, 2019, **GARRIS** provided a written acceptance of responsibility statement to the United State Probation Office accepting responsibility for his involvement in the offense and expressing remorse.

Defendant Statements/Admissions

10. None.

Victim Impact

11. This is a Title 18 offense and a Title 21 offense and there is no identifiable victim.

Offense Behavior Not Part of Relevant Conduct

12. None.

PART B. THE DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudication(s)

13. None.

Adult Criminal Conviction(s)

Note: Unless otherwise indicated, the defendant was represented by counsel or waived counsel, and the supervision/institutional adjustment is unavailable.

	<u>Date of Arrest</u>	<u>Conviction/Court</u>	<u>Date Sentence Imposed/Disposition</u>	<u>Guideline/Points</u>	
14.	12/22/2010 (Age 18)	Possession of Cocaine (F) 10CRS65503 Cumberland County Superior Court, Fayetteville, NC	02/06/2014: Pled guilty Consolidated with 11CRS60037, 6 to 8 months custody 02/06/2014: Released	4A1.2(a)(2)	0

The offense occurred on December 22, 2010.

Institutional Adjustment: The defendant incurred two infractions while in the NCDOC, the nature of which are unknown.

¹ The seized currency is converted to marijuana at a conservative rate of \$10 per gram.

XAVIER DOMINIQUE GARRIS
Page 5 of 15

15.	08/12/2011 (Age 18)	Possession With Intent to Manufacture, Sell, or Deliver Cocaine (F) 11CRS60037 Cumberland County Superior Court, Fayetteville, NC	02/06/2014: Pled guilty 6 to 8 months custody 02/06/2014: Released	4A1.1(b)	2
-----	------------------------	---	--	----------	---

On August 12, 2011, the defendant possessed with the intent to sell and deliver 1.3 grams of cocaine. Accompanying charges of Possession of Marijuana and Possession of Drug Paraphernalia were dismissed. See 10CRS65503 for Institutional Adjustment.

16.	01/10/2012 (Age 19)	Possession of a Stolen Motor Vehicle (F) 12CRS50459 Cumberland County Superior Court, Fayetteville, NC	02/06/2014: Pled guilty 6 to 17 months custody, consecutive to 11CRS60037 09/28/2014: Released to post-release supervision 06/25/2015: Post-release supervision completed	4A1.2(a)(2)	0
-----	------------------------	--	--	-------------	---

On January 10, 2012, the defendant possessed a stolen 2011 Nissan Versa. Accompanying charges of Fleeing or Eluding Arrest With a Motor Vehicle, Resisting a Public Officer, Possession of Drug Paraphernalia, Speeding, and Driving While License Revoked (12CRS50459); Speeding and Driving While License Revoked (12CR331); and Resisting a Public Officer, Possession of Marijuana, and Possession of Drug Paraphernalia (12CR60460) were dismissed.

Supervision Adjustment: The defendant violated the terms of his supervision by failing to pay monetary obligations, testing positive for drug use on March 2, 2015, and April 9, 2015, and an additional unknown violation.

17.	03/08/2012 (Age 19)	Possession With Intent to Manufacture, Sell, or Deliver Marijuana (F) 12CRS53064 Cumberland County Superior Court, Fayetteville, NC	02/06/2014: Pled guilty Consolidated with 12CRS50459, 6 to 17 months custody, consecutive to 11CRS60037 09/28/2014: Released to post-release supervision 06/25/2015: Post-release supervision completed	4A1.1(a)	3
-----	------------------------	---	--	----------	---

On March 7, 2012, the defendant possessed with intent to manufacture, sell, or deliver less than one-half ounce of marijuana. Accompanying charges of Maintaining a Vehicle, Dwelling, or Place for a Controlled Substance and Possession of Drug Paraphernalia (12CRS53064) were dismissed. See 12CRS50459 for Supervision Adjustment.

XAVIER DOMINIQUE GARRIS
Page 6 of 15

18.	06/24/2012 (Age 19)	Possession of a Stolen Firearm (F) 12CRS58105 Cumberland County Superior Court, Fayetteville, NC	02/06/2014: Pled guilty 6 to 17 months custody, consecutive to 12CRS50459 09/28/2014: Released to post-release supervision 06/25/2015: Post-release supervision completed	4A1.1(a)	3
-----	------------------------	--	--	----------	---

On June 24, 2012, the defendant possessed a stolen assault style weapon. Accompanying charges of Possession of a Stolen Firearm and Carrying a Concealed Weapon (12CRS58105), and Possession With Intent to Sell or Deliver Cocaine, Possession of Marijuana, and Carrying a Concealed Weapon (12CR58103) were dismissed. See 12CRS50459 for Supervision Adjustment.

19.	10/14/2012 (Age 20)	Possession With Intent to Manufacture, Sell, or Deliver Cocaine (F) 12CRS63211 Cumberland County Superior Court, Fayetteville, NC	02/06/2014: Pled guilty Consolidated with 12CRS50459, 6 to 17 months custody, consecutive to 11CRS60037 09/28/2014: Released to post-release supervision 06/25/2015: Post-release supervision completed	4A1.2(a)(2)	0
-----	------------------------	---	--	-------------	---

On October 14, 2012, the defendant possessed with intent to manufacture, sell, or deliver cocaine. Accompanying charges of Maintaining a Vehicle, Dwelling, or Place for Controlled Substances, Possession of Marijuana, and Carrying a Concealed Weapon (12CRS63211), Carrying a Concealed Gun (12CR63212), and Driving While License Revoked and Speeding (12CR63213), and Possession With Intent to Manufacture, Sell, or Deliver Cocaine, Selling Cocaine, and Delivering Cocaine (12CRS62946) were dismissed. See 12CRS50459 for Supervision Adjustment.

20.	11/14/2012 (Age 20)	Possessing, Selling, or Buying Altered Gun Serial Number (F) 12CRS64492 Cumberland County Superior Court, Fayetteville, NC	02/06/2014: Pled guilty Consolidated with 12CRS58105, 6 to 17 months custody, consecutive to 12CRS50459 09/28/2014: Released to post-release supervision 06/25/2015: Post-release supervision completed	4A1.2(a)(2)	0
-----	------------------------	--	--	-------------	---

The offense occurred on November 13, 2012. Accompanying charges of Possession With Intent to Manufacture, Sell, or Deliver Cocaine, Possession With Intent to Manufacture, Sell, or Deliver Oxycodone, and Carrying a Concealed Weapon (12CRS64492) and Carrying a Concealed Weapon (12CR64493) were dismissed. See 12CRS50459 for Supervision Adjustment.

XAVIER DOMINIQUE GARRIS
 Page 7 of 15

21.	06/15/2016 (Age 23)	Possession of a Firearm by a Felon (F) 16CRS58026 Cumberland County Superior Court, Fayetteville, NC	04/05/2017: Pled guilty 14 to 24 months custody, suspended, 18 months probation, serve 7 days active custody, \$1,200 restitution 08/14/2017: Probation revoked, 14 to 24 months custody 10/31/2018: Sentence completed	4A1.2(a)(2)	0
-----	------------------------	--	--	-------------	---

On June 15, 2016, the defendant possessed a pistol after being convicted of a felony offense. Accompanying charges of Conspiracy to Sell or Deliver Marijuana (16CR58026), and Possession With Intent to Manufacture, Sell, or Deliver Marijuana, Maintaining a Vehicle, Dwelling, or Place for Controlled Substances, Conspiracy to Sell Marijuana, and Carrying a Concealed Gun (16CRS58025) were dismissed.

Institutional Adjustment: The defendant incurred 16 infractions while in the NCDOC, the nature of which are unknown.

22.	10/14/2016 (Age 24)	Possession With Intent to Manufacture, Sell, or Deliver Marijuana (F) 16CRS63345 Cumberland County Superior Court, Fayetteville, NC	04/05/2017: Pled guilty Consolidated with 16CRS58026, 14 to 24 months custody, suspended, 18 months probation, serve 7 days active custody, \$1,200 restitution 08/14/2017: Probation revoked, 14 to 24 months custody 10/31/2018: Sentence completed	4A1.1(a)	3
-----	------------------------	---	--	----------	---

On October 14, 2016, the defendant possessed with intent to manufacture, sell, or deliver less than one-half ounce of marijuana. An accompanying charge of Maintaining a Vehicle, Dwelling, or Place for Controlled Substances and Possession of Marijuana Paraphernalia (16CRS63345), and Speeding (16IF709565) were dismissed. See 16CRS58026 for Institutional Adjustment.

23.	01/04/2017 (Age 24)	Possession of 5 or More Counterfeit Instruments (F) 17CRS50113 Possession With Intent to Sell or Deliver Marijuana (F) 17CRS50114 Cumberland County Superior Court, Fayetteville, NC	04/05/2017: Pled guilty Consolidated with 16CRS58026, 14 to 24 months custody, suspended, 18 months probation, serve 7 days active custody, \$1,200 restitution 08/14/2017: Probation revoked, 14 to 24 months custody 10/31/2018: Sentence completed	4A1.2(a)(2)	0
-----	------------------------	--	--	-------------	---

On January 3, 2017, the defendant possessed with intent to sell or deliver 116 grams of marijuana and more than five counterfeit instruments. Accompanying charges of Felon in Possession of a Firearm, Maintaining a Vehicle, Dwelling, or Place for Controlled Substances (17CRS50114), and Simple Possession of Schedule II Controlled Substances, Carrying a Concealed Weapon, and Possession of Marijuana (17CR50115) were dismissed. See 16CRS58026 for Institutional Adjustment.

24. In addition to the above-referenced convictions, the defendant was convicted of Improper Equipment (10CR734029), Speeding (11CR55744), Improper Equipment (11CR741127), and Improper Equipment and Failure to Notify Division of Motor Vehicle of Address Change (12CR717293) in Cumberland County. No criminal history points are assigned to these convictions. USSG §4A1.2(c).

Criminal History Computation

25. The criminal convictions above result in a subtotal criminal history score of 11.

26. The defendant committed the instant offense while under a criminal justice sentence for (16CRS50826, 16CRS63345, 17CRS50113, and 17CRS50114); therefore, two points are added. USSG §4A1.1(d).

27. The total criminal history score is 13. According to the sentencing table in USSG Chapter 5, Part A, a criminal history score of 13 establishes a criminal history category of VI.

28. The defendant is a career offender; therefore, the criminal history category is VI. USSG §4B1.1(b).

Other Criminal Conduct

29. None.

Pending Charges

30. None.

Other Arrests

31. The following charges were dismissed in Cumberland County: Resisting a Public Officer and Public Disturbance (09CR7387); License or Permitted Driver Not Supervised Under Age 18 and Failure to Stop for Stop Sign (10CR716201); No Operator's License and No Registration Card (10CR20256); four