APPENDIX

TABLE OF CONTENTS

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4434

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

MARTIN WILLIAM LUTHER HAMILTON,

Defendant – Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Loretta C. Biggs, District Judge. (1:20-cr-00310-LCB-1)

Argued: September 20, 2023 Decided: March 6, 2024
Amended: March 6, 2024

Before THACKER and QUATTLEBAUM, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by published opinion. Senior Judge Traxler wrote the opinion in which Judge Thacker and Judge Quattlebaum joined.

ARGUED: Kathleen Ann Gleason, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Greensboro, North Carolina, for Appellant. Craig Matthew Principe, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee. **ON BRIEF:** Louis C. Allen, Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Greensboro, North Carolina, for Appellant. Sandra J. Hairston, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

TRAXLER, Senior Circuit Judge:

This case presents another permutation of a question we frequently face: whether a prior conviction—here, a North Carolina conviction for attempted robbery with a dangerous weapon—qualifies as a violent felony under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e). As we will explain, we agree with the district court that the prior offense qualifies as a violent felony, and we therefore affirm the 180-month sentence imposed by the district court.

I.

Martin William Luther Hamilton pleaded guilty under a written plea agreement to one count of possession with intent to distribute fentanyl, *see* 21 U.S.C. § 841(a)(1), and one count of unlawful possession of a firearm by a felon, *see* 18 U.S.C. §§ 922(g)(1). The probation agent preparing Hamilton's presentence report (PSR) determined that three of Hamilton's prior North Carolina convictions qualified as violent felonies under the ACCA: assault with a deadly weapon with intent to kill; common law robbery; and attempted robbery with a dangerous weapon. Hamilton objected to the ACCA classification. While he did not dispute that the first two convictions met the requirements of the ACCA, he contended that attempted robbery with a dangerous weapon under North Carolina law does not amount to a violent felony under the ACCA.

When considering Hamilton's objection, the district court recognized the somewhat confusing and sometimes contradictory body of North Carolina law addressing the elements of attempted robbery with a dangerous weapon and determined that it should follow this court's unpublished decision in *United States v. Hinton*, 789 F. App'x 956 (4th

Cir. 2019) (No. 18-4612), which held that a North Carolina conviction for attempted robbery with a dangerous weapon qualifies as a crime of violence for purposes of the career-offender provisions of the Sentencing Guidelines.[1] The district court therefore concluded that Hamilton qualified as an armed career criminal and sentenced Hamilton to 180 months' imprisonment, the minimum sentence required by the ACCA. *See* 18 U.S.C. § 924(e)(1). Hamilton appeals, challenging only the district court's determination that the attempted robbery conviction was a predicate offense under the ACCA.

II.

A.

While violations of 18 U.S.C. § 922(g) typically carry a *maximum* sentence of fifteen years, *see* 18 U.S.C. § 924(a)(8),[2] the ACCA mandates a *minimum* fifteen-year sentence for defendants who have three prior convictions for offenses that qualify as a "violent felony or a serious drug offense." 18 U.S.C. § 924(e). As is relevant to this case, the ACCA defines "violent felony" as "any crime punishable by imprisonment for a term exceeding one year" that "has as an element the use, attempted use, or threatened use of physical force against the person of another." *Id.* § 924(e)(2). As used in the ACCA,

[1] Because the Guidelines' definition of a crime of violence and the ACCA's definition of a violent felony are "substantively identical," we rely on ACCA and Guidelines precedents interchangeably. *United States v. Mack*, 56 F.4th 303, 305-06 n.1 (4th Cir. 2022).

[2] In 2022, the maximum sentence for § 922(g) increased from ten years to fifteen years. *See* Bipartisan Safer Communities Act, Pub. L. No. 117-159, § 12004(c), 136 Stat. 1313, 1329 (2022).

"'physical force' means *violent* force—that is, force capable of causing physical pain or injury to another person." *Johnson v. United States*, 559 U.S. 133, 140 (2010).

To determine whether a prior offense satisfies the requirements of the ACCA's force clause, we apply the categorical approach, which examines the *elements* of the offense only, not the defendant's conduct when committing the offense. *See, e.g., United States v. Dozier*, 848 F.3d 180, 183 (4th Cir. 2017). Focusing on the minimum conduct required to commit the offense, we must determine whether the "statutory elements *necessarily* require the use, attempted use, or threatened use of physical force." *United States v. Mack*, 56 F.4th 303, 305 (4th Cir. 2022) (cleaned up) (emphasis added). "If there is a realistic probability that the state would apply the statute to conduct that does not involve the use, attempted use, or threatened use of violent physical force against another, then the offense is not categorically a 'violent felony' under the ACCA's force clause . . . ." *United States v. Jones*, 914 F.3d 893, 901 (4th Cir. 2019).

When applying the categorical approach to a state-law offense, we are "bound by the interpretation of such offense articulated by that state's courts." *United States v. Winston*, 850 F.3d 677, 684 (4th Cir. 2017); *see Johnson*, 559 U.S. at 138. We focus on the decisions of "the state's highest court" when determining the elements of the offense. *United States v. Aparicio–Soria*, 740 F.3d 152, 154 (4th Cir. 2014) (en banc). If the state's highest court has not addressed the elements of the criminal offense at issue, the "state's intermediate appellate court decisions constitute the next best indicia of what state law is." *Castillo v. Holder*, 776 F.3d 262, 268 n.3 (4th Cir. 2015) (cleaned up). We may nonetheless

disregard the decisions of an intermediate court if we are "convinced by other persuasive data that the highest court of the state would decide otherwise." *Id.* (cleaned up).

B.

The offense at issue in this case is North Carolina's statutory offense entitled "Robbery with firearms or other dangerous weapons." N.C. Gen. Stat. § 14-87(a). The statute provides:

> Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class D felony.

Id. Conviction under § 14-87(a) thus requires proof of "(1) an unlawful taking or an attempt to take personal property from the person or in the presence of another, (2) by use or threatened use of a firearm or other dangerous weapon, (3) whereby the life of a person is endangered or threatened." *State v. Kemmerlin*, 573 S.E.2d 870, 889 (N.C. 2002); *see State v. Oldroyd*, 869 S.E.2d 193, 197 (N.C. 2022) ("A person is guilty of the offense of robbery with a dangerous weapon, or an attempt to commit the crime, if he or she (1) takes or attempts to take personal property from another, (2) while possessing, using, or threatening to use a firearm or other dangerous weapon, (3) whereby the life of a person is endangered or threatened.") (cleaned up); *accord State v. Murrell*, 804 S.E.2d 504, 509 (N.C. 2017); *State v. Williams*, 438 S.E.2d 727, 728 (N.C. 1994).

These elements appear to meet all the requirements of a violent felony. The use of a firearm or other dangerous weapon is a use of force within the meaning of the ACCA, and the requirement of a taking or attempted taking "from the person or in the presence of another" ensures that the force is directed at another person. *See Borden v. United States*, 141 S. Ct. 1817, 1825 (2021) ("The phrase 'against another,' when modifying the 'use of force,' demands that the perpetrator direct his action at, or target, another individual. Reckless conduct is not aimed in that prescribed manner."). And because the state statute requires that the use of the dangerous weapon must endanger the life of another, the level of force required by the statute is violent force. *See Johnson*, 559 U.S. at 140. Indeed, this court has already concluded that armed robbery under N.C. Gen. Stat. § 14-87(a) is a violent felony under the ACCA. *See United States v. Burns-Johnson*, 864 F.3d 313, 320 (4th Cir. 2017)

Hamilton, however, insists that the analysis is different when the underlying crime is *attempted* armed robbery rather than *completed* armed robbery. In making this argument, Hamilton points to various North Carolina cases that describe attempt offenses as involving only two elements—the intent to commit the substantive offense and an overt act going beyond mere preparation for the offense. *See State v. Davis*, 455 S.E.2d 627, 632 (N.C. 1995) ("The two elements of attempted robbery with a dangerous weapon are: (1) an intent to commit the substantive offense, and (2) an overt act done for that purpose which goes beyond mere preparation but falls short of the completed offense."); *State v. Allison*, 352 S.E.2d 420, 423 (N.C. 1987) ("An attempted robbery with a dangerous weapon occurs when a person, with the specific intent to unlawfully deprive another of personal property

by endangering or threatening his life with a dangerous weapon, does some overt act calculated to bring about this result."); *State v. May*, 235 S.E.2d 178, 182 (N.C. 1977) ("An attempted armed robbery occurs when a defendant with the requisite intent to rob, does some overt act calculated and designed to bring about the robbery, thereby endangering or threatening the life of a person.") (cleaned up). Under this formulation, Hamilton contends attempted armed robbery does not qualify as a violent felony because a perpetrator could take an overt action that does not involve the use or threatened use of force. We disagree.

Under North Carolina law, a defendant under indictment "may be convicted of the crime charged therein or of a less degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a less degree of the same crime." N.C. Gen. Stat. § 15-170. If the defendant is convicted of an attempt to commit the indicted offense, the attempt offense generally "is punishable under the next lower classification as the offense which the offender attempted to commit." N.C. Gen. Stat. § 14-2.5. As to this inchoate type of attempt offense, the intent-plus-overt-act formulation is the standard formulation of the elements of that offense. *See, e.g., State v. Surles*, 52 S.E.2d 880, 882 (N.C. 1949) ("An attempt to commit a crime is an act done with intent to commit that crime, carried beyond mere preparation to commit it, but falling short of its actual commission. An indictable attempt, therefore, consists of two important elements: (1) an intent to commit the crime, and (2) a direct ineffectual act done towards its commission.") (cleaned up).

The statute at issue here, however, does not create an inchoate attempt offense. Instead, N.C. Gen. Stat. § 14-87(a) defines the crime of robbery with a firearm or other

dangerous weapon and includes within that definition of robbery cases where the defendant attempted but did not succeed in taking personal property. *See State v. White*, 369 S.E.2d 813, 817 (N.C. 1988) ("The purpose of the statute was to increase the punishment for common law robbery when firearms or other dangerous weapons were used to commit a robbery, whether or not the robber succeeded in the effort to take personal property. The statute's thrust was not to redefine robbery by eliminating the element of a taking from the offense, but rather to provide that an attempted taking with a dangerous weapon be punished as severely as a completed taking under the same circumstances. . . .") (cleaned up); *May*, 235 S.E.2d at 182 ("By the terms of G.S. 14-87, the offense is complete if there is an attempt to take personal property by use of firearms or other dangerous weapons. The attempt itself is a violation of the statute and is a felony."); *State v. Evans*, 183 S.E.2d 540, 544 (1971) ("The offense is complete if there is either a taking or an attempt to take the personal property of another by the means and in the manner prescribed by the statute, but there must be one or the other.").

That the offense detailed in § 14-87(a) is not an inchoate attempt offense is evident from the language and structure of the statute itself. Subsection (a) of the statute sets out the elements of the offense, including the elements of a taking or attempted taking. Subsection (a1), however, states that "[a]ttempted robbery with a dangerous weapon shall constitute a lesser included offense of robbery with a dangerous weapon, and evidence sufficient to prove robbery with a dangerous weapon shall be sufficient to support a conviction of attempted robbery with a dangerous weapon." N.C. Gen. Stat. § 14-87(a1). The inclusion of subsection (a1) shows that the North Carolina legislature distinguished

the offense of robbery premised on an attempted taking under subsection (a) from the inchoate offense of "attempted robbery" under subsection (a1). Thus, an armed perpetrator who is stopped before making his way inside the bank may be guilty of the inchoate offense of "attempted robbery with a dangerous weapon," but he would not be guilty of *statutory* robbery with a dangerous weapon under § 14-87(a) because he was stopped before he could engage in the conduct necessary to satisfy the other elements of the offense spelled out in the statute, such as using or threatening to use force against another person. *See Evans*, 183 S.E.2d at 544 ("Proof of the defendant's presence in a place of business, his possession therein of a firearm and his intent to commit the offense of robbery is not sufficient to support a conviction of the offense described in G.S. § 14-87, for it omits the essential elements of (1) a taking or attempt to take personal property, and (2) the endangering or threatening of the life of a person.").

North Carolina cases, however, often refer to robbery premised on an attempted taking under § 14-87(a) as "attempted robbery," *see, e.g., White*, 369 S.E.2d at 818 ("N.C.G.S. § 14–87(a) defines two crimes: armed robbery, which requires an actual taking, and attempted armed robbery, which requires an attempted taking. An attempted taking is not, therefore, an essential element of armed robbery."), which can make it difficult to determine whether a given case is addressing the inchoate attempt offense or the statutory offense of armed robbery involving an attempted taking.

In cases where it is clear that the defendant was charged with robbery with a dangerous weapon under § 14-87(a), North Carolina courts sometimes refer exclusively to the elements as spelled out in the statute, *see Kemmerlin*, 573 S.E.2d at 889; *Murrell*, 804

S.E.2d at 509, but in other cases refer exclusively to the two standard elements of the general, inchoate attempt offense when describing the elements of the statutory offense, *see Allison*, 353 S.E.2d at 423 ("Defendant was charged with attempted robbery with a dangerous weapon in violation of N.C.G.S. § 14-87. One of the elements of an attempt to commit a crime is that defendant have the intent to commit the substantive offense. An attempted robbery with a dangerous weapon occurs when a person, with the specific intent to unlawfully deprive another of personal property by endangering or threatening his life with a dangerous weapon, does some overt act calculated to bring about this result."). And in some cases, the courts refer to *both* the statutorily derived elements *and* the two-element formulation used for inchoate attempt offenses. *See White*, 369 S.E.2d at 818; *May*, 235 S.E.2d at 182. Nonetheless, despite the confusing case law, we conclude that the district court properly sentenced Hamilton as an armed career criminal.

We first note that the crime at issue in this case is a statutory offense, not a common-law offense. Under North Carolina law, "the legislative intent controls the interpretation of a criminal statute," *State v. Jones*, 598 S.E.2d 125, 128 (N.C. 2004), and the elements of a statutory offense are thus established through the language of the statute itself, *see State v. Hales*, 122 S.E.2d 768, 771 (N.C. 1961) ("Whether a criminal intent is a necessary element of a statutory offense *is a matter of construction to be determined from the language of the statute* in view of its manifest purpose and design.") (emphasis added). The elements of the offense spelled out by the Supreme Court of North Carolina in *Oldroyd, Kemmerlin*, and *Murrell* faithfully follow the language of § 14-87(a) and fully explain the elements the State must prove in order to obtain a conviction under the statute. Hamilton's preferred

intent-plus-overt-act formulation, by contrast, is entirely untethered from the language of § 14-87(a) and therefore cannot be considered a correct formulation of the elements of the statutory offense. *See Jones*, 598 S.E.2d at 128 ("When the language of a statute is clear and unambiguous, there is no room for judicial construction, and the courts must give it its plain and definite meaning.") (cleaned up).

While the North Carolina courts' occasional commingling of the statutory elements and the standard elements of a common-law attempt offense can be confusing, we believe those references must be understood as a sort of shorthand summary of what is generally required in cases involving attempts rather than a fully developed and articulated list of the elements of the offense created by § 14-87(a). To conclude otherwise would mean that the state courts ignored the plain language of the statute and the holdings of *Oldroyd, Kemmerlin*, and *Murrell* in order to craft their own version of an attempted-taking robbery, and that the courts did so without even an acknowledgment of their extraordinary departure from their obligation to apply the statute in accordance with its plain language.

Moreover, as previously noted, this court in *Burns-Johnson* held that offenses under G.S. § 14-87(a) categorically qualify as violent felonies. The court determined that § 14-87(a) was an indivisible statute[3] for purposes of the ACCA inquiry and that the offense

[3] When a statute "comprises multiple, alternative versions of the crime," it is considered a "divisible" statute for purposes of the violent-felony/crime-of-violence analysis under the ACCA and the Sentencing Guidelines. *Descamps v. United States*, 570 U.S 254, 262 (2013). When considering the status of an offense under a divisible statute, we apply a *modified* categorical approach which permits us to look to "a restricted set of materials"—for example, the indictment—to determine which of the multiple crimes contained within the statute was the crime of conviction. *Id.* at 262.

created by § 14-87(a) categorically qualified as a violent felony under the ACCA's force clause. *Burns-Johnson*, 864 F.3d at 315. Although neither the defendant's challenges to his ACCA designation nor the court's analysis in *Burns-Johnson* addressed the attempted-taking language of the statute, the holding would appear to be binding on this panel. *See Mentavlos v. Anderson*, 249 F.3d 301, 312 n.4 (4th Cir. 2001) ("[A] panel of this court cannot overrule, explicitly or implicitly, the precedent set by a prior panel of this court. Only the Supreme Court or this court sitting *en banc* can do that."); *United States v. Dodge*, 963 F.3d 379, 383 (4th Cir. 2020) (concluding that the panel was bound by a prior panel opinion holding that a state offense qualifies as an ACCA predicate offense despite the fact that the prior opinion "did not explicitly consider" the particular issue raised in *Dodge*). But even if we are not bound by *Burns-Johnson*, we would reach the same conclusion.

As Hamilton points out, the fact that a criminal offense qualifies as a violent felony does not necessarily mean that an attempt to commit that offense also qualifies as a violent

The determination in *Burns-Johnson* that N.C.G.S. § 14-87(a) is an indivisible statute setting out one crime (robbery with a dangerous weapon) that can be committed through the different means (an actual taking or an attempted taking of personal property) is arguably in tension with the state courts' understanding of the statute. *See State v. White*, 369 S.E.2d 813, 818 (N.C. 1988) ("Attempted armed robbery, although defined in N.C.G.S. § 14–87 along with armed robbery, is clearly a separate offense."). Our decision in this case, however, does not turn on the divisibility *vel non* of § 14-87(a). Even if we were to assume that the statute is divisible, the PSR adequately establishes that Hamilton was convicted of the attempted-taking form of the offense. *See United States v. Thompson*, 421 F.3d 278, 285 (4th Cir. 2005) (holding that a district court may rely on the PSR's description of prior convictions where the PSR "bears the earmarks of derivation from *Shepard*-approved sources such as the indictments and state-court judgments" and the defendant does not object). Accordingly, whether the statute is divisible or indivisible, the question we must answer is whether the attempted-taking language prevents the offense from qualifying as a violent felony.

felony, particularly if the case involves the generic, inchoate offense of attempting to commit another crime. For example, the Supreme Court in *United States v. Taylor*, 142 S. Ct. 2015 (2022), held that while a completed Hobbs Act robbery categorically qualifies as a violent felony, attempted Hobbs Act robbery does not. The Court explained that

> [T]o win a conviction for a *completed* [Hobbs Act] robbery the government must show that the defendant engaged in the "unlawful taking or obtaining of personal property from the person of another, against his will, by means of actual or threatened force." § 1951(b). From this, it follows that to win a case for *attempted* Hobbs Act robbery the government must prove two things: (1) The defendant intended to unlawfully take or obtain personal property by means of actual or threatened force, and (2) he completed a "substantial step" toward that end. . . .
>
> . . . . Whatever one might say about *completed* Hobbs Act robbery, *attempted* Hobbs Act robbery does not satisfy the elements clause. Yes, to secure a conviction the government must show an intention to take property by force or threat, along with a substantial step toward achieving that object. But an intention is just that, no more. And whatever a substantial step requires, it does not require the government to prove that the defendant used, attempted to use, or even threatened to use force against another person or his property.

Id. at 2020-21 (cleaned up) (underscored emphasis added).

As this portion of the decision makes clear, the outcome in *Taylor* turned on the elements of attempted Hobbs Act robbery—intent to commit Hobbs Act robbery plus a substantial step. As we have already discussed, however, the offense at issue in this case is an offense fully and carefully delineated in the statute with explicit elements that go beyond the common-law formulation of the elements required to prove an attempt to commit a crime. And for the reasons explained in *Hinton*, those carefully delineated elements establish that robbery premised on an attempted taking under § 14–87(a) categorically qualifies as a violent felony:

> Like the completed offense of robbery with a dangerous weapon, attempted robbery with a dangerous weapon is defined in N.C. Gen. Stat. § 14-87 and actually requires as an element the use or threatened use of a firearm or other dangerous weapon. The "attempt" portion of attempted robbery with a dangerous weapon refers to the taking of property, not to the use or threat of force. To prove attempted robbery with a dangerous weapon, the State must "prove beyond a reasonable doubt that the defendant possessed a firearm or other dangerous weapon at the time of the attempted robbery and that the victim's life was in danger or threatened." *State v. Williams*, 335 N.C. 518, 438 S.E.2d 727, 728 (1994). Accordingly, our conclusion in *Burns-Johnson* that robbery with a dangerous weapon "necessarily entails the use, attempted use, or threatened use of violent physical force," 864 F.3d at 318, similarly applies to the force necessary for a conviction of attempted robbery with a dangerous weapon . . . .

789 F. App'x at 958 (cleaned up).

Hamilton nonetheless insists that North Carolina courts have in fact upheld convictions under § 14-87(a) for conduct that does not involve the use or threatened use of violent force. *See Jones*, 914 F.3d at 901 ("If there is a realistic probability that the state would apply the statute to conduct that does not involve the use, attempted use, or threatened use of violent physical force against another, then the offense is not categorically a 'violent felony' under the ACCA's force clause. . . ."). To support this argument, Hamilton relies primarily on *State v. Lawrence*, 723 S.E.2d 326 (N.C. 2012), and *State v. Everett*, 633 S.E.2d 891 (N.C. Ct. App. 2006) (unpublished).[4]

[4] Hamilton also contends that his argument is (indirectly) supported by the state court of appeals' opinion in *State v. Oldroyd*, 843 S.E.2d 478 (N.C. Ct. App. 2020), which held that an indictment for attempted armed robbery is fatally defective if it does not include the name of the victim. *See id.* at 551. After the briefs were filed in this case, however, the North Carolina Supreme Court overruled the court of appeals and held that there is no requirement that an indictment for attempted armed robbery include the name of the victim. *See State v. Oldroyd*, 869 S.E.2d 193, 198-99 (N.C. 2022). As previously noted, the *Oldroyd* court used the three-element, statutory-language-based formulation when listing the elements of armed robbery under N.C. Gen. Stat. § 14-87(a). *See id.* at 197

In *Lawrence*, David Lawrence and some of his friends planned to use firearms to rob Charlise Curtis. The group twice went to Curtis's home while armed and intending to rob her, but they failed both times. The first attempt was thwarted by the arrival of the police, who had been alerted to suspicious activity by neighbors. The second attempt was thwarted by a neighbor who saw two members of the group sneak around the back of Curtis's house. The neighbor called the police, retrieved his pistol, and went out to confront the backyard bandits, who then fled the scene. *See Lawrence*, 723 S.E.2d at 328. Lawrence was convicted of eight counts, including two counts of attempted robbery with a dangerous weapon. The state court of appeals found the evidence sufficient to support the attempted robbery convictions but concluded that the defendant was entitled to a new trial on a conspiracy count because of a plain error in the instructions for that count. *See State v. Lawrence*, 706 S.E.2d 822, 836 (N.C. Ct. App. 2011). The state supreme court granted review to consider only the question of plain error in the conspiracy instructions. On that issue, the court held that the defendant was not prejudiced by the erroneous jury instruction, and the court therefore reversed the decision of the court of appeals *See Lawrence*, 723 S.E.2d at 329-30, 335.

In *Everett*, a group of friends planned to use firearms to rob a drug dealer named Diane. The group drove to Diane's house, but she was not home. The group adjusted their plans on the fly and decided to instead rob Micah Anderson. They drove to the street where

("A person is guilty of the offense of robbery with a dangerous weapon, or an attempt to commit the crime, if he or she (1) takes or attempts to take personal property from another, (2) while possessing, using, or threatening to use a firearm or other dangerous weapon, (3) whereby the life of a person is endangered or threatened.") (cleaned up).

they believed (incorrectly) that Anderson lived. Two of the friends—Dennis Everett and Jontavan Moore—got out of the car, armed with a loaded assault rifle. Sheltonia Everett (Dennis's wife), remained in the car. After some period of time, Sheltonia heard gunshots. Dennis Everett returned to the car in a panicked state and drove away, telling Sheltonia that he had shot Moore. Moore's dead body was found the next day, and the surviving members of the group were subsequently arrested. *See Everett*, 633 S.E.2d 891, at *1-2. Based on her involvement, Sheltonia Everett was convicted of conspiracy to commit robbery with a dangerous weapon and attempted robbery with a dangerous weapon. Those convictions were affirmed by the court of appeals. *See id*. at *4-6.

Because the defendants in *Lawrence* and *Everett* were never in the presence of their intended victims, Hamilton contends that the cases establish that defendants may be convicted in North Carolina of attempted robbery with a dangerous weapon under facts that did not involve a use or threatened use of force directed against another person. We disagree.

First of all, it appears that the defendant in *Everett* was convicted of the common-law inchoate attempted-robbery offense, not the statutory robbery-by-attempted-taking offense at issue here. As discussed above, a defendant can be convicted of the inchoate offense of attempted robbery under facts that would not support a conviction under § 14-87(a). And while the opinion of the *court of appeals* in *Lawrence* may provide some support for Hamilton's argument, the only issue considered by the *supreme court* in *Lawrence* was the application of the plain error standard to erroneous jury instructions on the charge of conspiring to commit robbery with a dangerous weapon; the court expressly declined to

consider the court of appeals' resolution of the challenges to the attempted robbery convictions. *See Lawrence*, 723 S.E.2d at 329. As we have already discussed, this court is bound by the state *supreme court's* interpretation of the relevant statute, not that of an intermediate appellate court. *See Aparicio–Soria*, 740 F.3d at 154 (directing courts to focus on the decisions of "the state's highest court" when determining the elements of the offense). Because nothing in the *supreme court's* decision in *Lawrence* undermines *that court's* previous explications of the elements of the statutory offense of the attempted-taking form of robbery with a dangerous weapon, we do not believe that *Lawrence* undermines our determination that the North Carolina offense of armed robbery premised on an attempted taking qualifies as a violent felony under the ACCA.

III.

For the reasons set forth above, we find no error in the district court's determination that Hamiton's conviction under N.C. Gen. Stat. 14-87(a) qualifies as a violent felony for purposes of the ACCA. We therefore affirm the decision of the district court.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA	*	Case No. 1:20CR310-1
	*	
vs.	*	Winston-Salem, North Carolina
	*	July 30, 2021
MARTIN WILLIAM LUTHER HAMILTON,	*	9 a.m.
	*	
Defendant.	*	

****

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE LORETTA C. BIGGS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: CRAIG M. PRINCIPE, ESQUIRE
Office of the United States Attorney
101 S. Edgeworth Street, 4th Floor
Greensboro, North Carolina 27401

For the Defendant: KATHLEEN A. GLEASON, ESQUIRE
Office of the Federal Public Defender
301 N. Elm Street, Suite 410
Greensboro, North Carolina 27401

Court Reporter: Lori Russell, RMR, CRR
P.O. Box 20593
Winston-Salem, North Carolina 27120

Proceedings recorded by stenotype reporter.
Transcript produced by Computer-Aided Transcription.

Appendix B

P R O C E E D I N G S

(Defendant present.)

THE COURT: Mr. Principe, if you'd give me a minute, I'm going to take -- I'm going to put this on, take this off, so this gentleman can hear everything I have to say about his case.

MR. PRINCIPE: Yes, Your Honor.

(Pause in the proceedings.)

THE COURT: All right. Yes, sir.

MR. PRINCIPE: Good morning, Your Honor.

THE COURT: Good morning.

MR. PRINCIPE: This matter is United States versus Martin William Luther Hamilton in 1:20CR310-1. The matter is on for sentencing. He's represented by Kathleen Gleason.

THE COURT: All right. Good morning, Ms. Gleason.

MS. GLEASON: Good morning, Your Honor.

THE COURT: You represent the Defendant in this matter?

MS. GLEASON: Yes, Your Honor, I do.

THE COURT: All right. The Court has had an opportunity to review a number of documents in this case: The presentence report; the Defendant's position paper, ECF 17; Defendant Government's -- the Government's position on sentencing, 18; Defendant's response to the Government, 19; supplemental position regarding sentencing, 20; Defendant's

response to supplemental, 21; and Defendant's sentencing memorandum.

MS. GLEASON: Yes, Your Honor. Thank you.

THE COURT: Are there other documents that you ask that I review before we proceed?

MS. GLEASON: No, Your Honor.

THE COURT: All right.

MR. PRINCIPE: No, Your Honor.

THE COURT: Are you expecting an evidentiary hearing, and do you have witnesses in the courtroom?

MS. GLEASON: Not an evidentiary hearing or witnesses, Your Honor.

THE COURT: All right. Let me ask the Government. Are you expecting an evidentiary hearing, and do you have witnesses in the courtroom?

MR. PRINCIPE: No, Your Honor.

THE COURT: All right. Ms. Gleason, have you received a copy of the Defendant's presentence report?

MS. GLEASON: Yes, Your Honor.

THE COURT: Have you had an opportunity to read and discuss that report with your client?

MS. GLEASON: I have.

THE COURT: Have you and your client discussed what, if any, objections he may have to that report?

MS. GLEASON: Yes, Your Honor, we have.

THE COURT: Are you expecting -- well, I asked you that question. I won't ask it again.

Are you prepared to proceed at this time?

MS. GLEASON: We are.

THE COURT: All right. Mr. Hamilton, if you would stand up, sir.

Have you reviewed the presentence report with your attorney?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Are you satisfied you understand the contents of the presentence report?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Have you discussed what, if any, objections you may have to that report?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Are you prepared, sir, to proceed with sentencing?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. You may be seated, sir.

Now, it appears that we do have one objection, which is the -- involves all of those various papers that everyone has submitted to the Court. The Defendant contends that the felon -- his felony, attempted robbery conviction with a dangerous weapon, is not a violent felony under the ACCA.

At this point does either party wish to add to or discuss

further this issue?

The Court is -- the Court has read everything, and I will tell you I feel as though the North Carolina courts are all over the place on this. However, the Court has -- does have in my mind what I believe is correct, but I will hear from either of you further.

Why don't we start with you, Ms. Gleason. Please don't repeat everything you've got in those papers.

MS. GLEASON: Yes, Your Honor. I will not. And for the record, we can always include those papers if there's -- we need to have a record on appeal.

THE COURT: Yes.

MS. GLEASON: Your Honor, the only thing that I will add is, frankly, to agree with the Court; that the North Carolina state courts are all over the place. As the Court is well aware, it is not this Court's job or really jurisdiction to make a determination of where the state court should land, absent making a referral to the state courts to ask them where the Court should land.

The question really is, is there a realistic probability that a person could be convicted of attempted robbery with a dangerous weapon where the elements do not include the use, attempted use, or threatened use of physical force against a person. The Supreme Court has spoken, and I don't need to speak any further, Your Honor.

THE COURT: You mean the North Carolina Supreme Court.

MS. GLEASON: North Carolina, yes, Your Honor.

THE COURT: All right. Let me hear from you, Mr. Principe.

MR. PRINCIPE: Thank you, Your Honor.

I agree that both sides have thoroughly briefed this issue to give Your Honor enough time to look at these cases and reach your own independent conclusion, so I have nothing else to add, unless the Court has questions regarding the papers written.

THE COURT: This is a case in which the Court of Appeals is going to have to make a published decision that can be used with respect to this issue.

The Court concludes that Hamilton's prior conviction for attempted robbery with a dangerous weapon does, in fact, qualify as a crime of violence under the ACA [sic], and should be considered as an enhancement in this particular case. Whether you apply the categorical approach or the minimum conduct test, the Court comes out in the same place: That there are two offenses that are outlined in that statute; and that the elements of that statute require, in my conclusion, that armed robbery is a violent felony pursuant to the ACA.

And I will tell you -- of course, I will tell you I have sat on the North Carolina Court of Appeals, and you have a number of different panels, and all those panels are weighing in. So the Court relied on the Supreme Court and on *White* in

coming to this conclusion, and I will tell you the Court did not ignore what the Court of Appeals has done in *Hinton*. While that is clearly not authoritative at this point because it is an unpublished decision, it would be foolish for us not to look into that window to see how the Court of Appeals is looking at this case -- at this issue. And so that is the Court's conclusion.

Does anyone care to be heard further with respect to that?

Therefore, I believe that the calculations in the PSR are correct.

Is there anything further we need to address?

MR. PRINCIPE: Not for the Government, Your Honor.

MS. GLEASON: Your Honor, I would like to hear how the Court views the 2012 North Carolina case of *Lawrence's* statement about the appropriateness that the elements were that the person possessed a firearm and then intended to use it.

THE COURT: The attempt portion of that goes to not the element of force. It goes to the taking -- it goes to the actual taking. And I don't recall that case specifically because you guys cited a hundred. So I don't recall that case specifically; but if you wish, I will take some time and look back at it and determine what you're -- I will give you some further clarification of that. But the Court -- I don't recall that specific case.

MS. GLEASON: Your Honor, I don't think that we need

to. The Court has ruled, and I don't need further clarification.

THE COURT: And the Court is comfortable with its ruling.

MS. GLEASON: Yes, Your Honor.

THE COURT: I believe that is the correct ruling. Anything further?

MS. GLEASON: No, Your Honor.

THE COURT: All right. Having made that determination, are there other objections to the presentence report?

MS. GLEASON: No other objections.

THE COURT: The Court then therefore adopts the presentence report without change. As to all matters in the presentence report the Court adopts as findings of fact. We will now move to imposition of sentence.

I believe I have accepted your client's plea. Is that correct, Ms. Gleason?

MS. GLEASON: That's correct.

THE COURT: All right. In determining the sentence to be imposed, I must first calculate the applicable guidelines, which are advisory. The total offense level is 33. The criminal history category is VI. The imprisonment range is 235 months to 293 months. The guideline supervised release range in Count Two is 5 years; in Count Four is 5 years -- 2 to 5

years. The fine range is $35,000 to $10 million, a special assessment of $100 on each count.

The Court -- let me ask you, Mr. Principe, do you agree with those guideline calculations?

MR. PRINCIPE: Yes, Your Honor. And I'd also just note that there is the possibility of community restitution up to $10 million.

THE COURT: All right. Thank you.

Do you agree with those calculations with the edit from Mr. Principe?

MS. GLEASON: Without waiving the objection, Your Honor, I do.

THE COURT: All right. Now, without waiving the objection to this Court's finding on --

MS. GLEASON: That's correct.

THE COURT: All right. Understood.

The Court has considered the calculations resulting from an application of the guidelines and find that they were appropriately determined. Each of the offenses in this -- that -- to which the Defendant has pled guilty carry mandatory minimums.

Now, I don't have requests for departures in front of me. Is there a request for a departure that I did not see?

MS. GLEASON: No, Your Honor.

THE COURT: All right.

FILED: April 10, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4434
(1:20-cr-00310-LCB-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MARTIN WILLIAM LUTHER HAMILTON

Defendant - Appellant

M A N D A T E

The judgment of this court, entered March 6, 2024, 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/Nwamaka Anowi, Clerk

Appendix C

FILED: April 2, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4434
(1:20-cr-00310-LCB-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MARTIN WILLIAM LUTHER HAMILTON

Defendant - Appellant

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk

FILED: March 20, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4434
(1:20-cr-00310-LCB-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MARTIN WILLIAM LUTHER HAMILTON

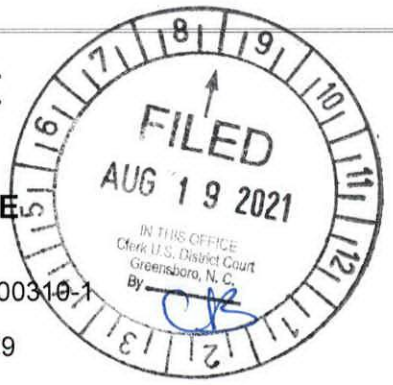
Defendant - Appellant

TEMPORARY STAY OF MANDATE

Under Fed. R. App. P. 41(b), the filing of a timely petition for rehearing or rehearing en banc stays the mandate until the court has ruled on the petition. In accordance with Rule 41(b), the mandate is stayed pending further order of this court.

/s/Nwamaka Anowi, Clerk

United States District Court
Middle District of North Carolina



UNITED STATES OF AMERICA

v.

MARTIN WILLIAM LUTHER HAMILTON

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:20-CR-00310-1

USM Number: 17203-509

Kathleen A. Gleason, Assistant Federal Public Defender
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to counts 2 and 4.

☐ 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) and (b)(1)(A)	Possession with Intent to distribute fentanyl	02/13/2020	2
18:922(g)(1) and 924(e)(1)	Felon in possession of a firearm	02/13/2020	4

The defendant is sentenced as provided in pages 2 through 8 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)

☒ Counts 1, 3 are dismissed on motion of the defendant with no objection from the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the economic circumstances.

July 30, 2021
Date of Imposition of Judgment

Signature of Judge

Loretta C. Biggs, United States District Judge
Name & Title of Judge

August 16, 2021
Date

DEFENDANT: MARTIN WILLIAM LUTHER HAMILTON
CASE NUMBER: 1:20-CR-00310-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **180 months.**

[180 months as to each of counts 2 and 4 to run concurrently]

☒ The court makes the following recommendations to the Bureau of Prisons: **that the Defendant receives a mental health evaluation and any follow up treatment as well as substance abuse treatment. It is further recommended that the Defendant receives vocational training specifically in the area of electrical work and that he be designated to a facility as close as possible to Rowan County, NC.**

☒ 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 _____ am/pm 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 pm 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: MARTIN WILLIAM LUTHER HAMILTON
CASE NUMBER: 1:20-CR-00310-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: **five (5) years.**

[5 years as to each of counts 2 and 4 to run concurrently]

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 the defendant poses 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 which 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: MARTIN WILLIAM LUTHER HAMILTON
CASE NUMBER: 1:20-CR-00310-1

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: MARTIN WILLIAM LUTHER HAMILTON
CASE NUMBER: 1:20-CR-00310-1

SPECIAL CONDITIONS OF SUPERVISION

1.The defendant shall cooperatively participate in a mental health treatment program, which may include inpatient treatment, and pay for treatment services, as directed by the probation officer.

2.The defendant shall submit to substance abuse testing, at any time, as directed by the probation officer. The defendant shall cooperatively participate in a substance abuse treatment program, which may include drug testing and inpatient/residential treatment, and pay for treatment services, as directed by the probation officer. During the course of treatment, the defendant shall abstain from the use of alcoholic beverages.

3.The defendant shall submit his person, residence, office, vehicle, or any property under his control to a warrantless search. Such search shall be conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to such a search may be grounds for revocation; the defendant shall warn any residents that the premises may be subject to searches.

DEFENDANT: MARTIN WILLIAM LUTHER HAMILTON
CASE NUMBER: 1:20-CR-00310-1

CRIMINAL MONETARY PENALTIES

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$200.00	$.00	$.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.

☐ 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 pursuant to 18 U.S.C. Section 3612(f)(3) 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: MARTIN WILLIAM LUTHER HAMILTON
CASE NUMBER: 1:20-CR-00310-1

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 $ 200.00 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:

To the extent the defendant cannot immediately comply, the Court will recommend that the defendant participate in the Inmate Financial Responsibility Program.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are to be made to the Clerk of Court, United States District Court for the Middle District of North Carolina, 324 West Market Street, Greensboro, NC 27401-2544, unless otherwise directed by the court, the probation officer, or the United States Attorney. **Nothing herein shall prohibit the United States Attorney from pursuing collection of outstanding criminal monetary penalties.**

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

☐ Joint and Several

Defendant and Co-Defendant Names, 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) 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.

DEFENDANT: MARTIN WILLIAM LUTHER HAMILTON
CASE NUMBER: 1:20-CR-00310-1

DISPOSITION OF EVIDENCE

Upon completion of the time for appeal, any contraband, controlled substances, and firearm(s) seized shall be destroyed.

RELEVANT STATUTORY PROVISION

18 U.S.C. § 924(e).

(e)(1) In the case of a person who violates section 9222(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves the use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

West's North Carolina General Statutes Annotated
Chapter 14. Criminal Law
Subchapter V. Offenses Against Property
Article 17. Robbery (Refs & Annos)

This section has been updated. Click here for the updated version.

N.C.G.S.A. § 14-87

§ 14-87. Robbery with firearms or other dangerous weapons

Effective: [See Text Amendments] to November 30, 2017

<Text of section eff. until Dec. 1, 2017. See, also, section eff. Dec. 1, 2017.>

(a) Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class D felony.

(b), (c) Repealed by Laws 1979, c. 760, § 5.

(d) Repealed by Laws 1993, c. 539, § 1173, eff. Oct. 1, 1994.

Credits

Amended by Laws 1975, c. 543; Laws 1975, c. 846; Laws 1977, c. 871, §§ 1, 6; Laws 1979, c. 760, § 5; Laws 1979 (2nd Sess.), c. 1316, § 12; Laws 1993, c. 539, § 1173, eff. Oct. 1, 1994; Laws 1994, (1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994.

N.C.G.S.A. § 14-87, NC ST § 14-87

The statutes and Constitution are current through the end of the 2023 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes.

End of Document