

United States Court of Appeals
For the Eighth Circuit

No. 16-1293

United States of America

Plaintiff - Appellee

v.

Shurron S. Roberts

Defendant - Appellant

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: June 29, 2017

Filed: July 13, 2017

[Unpublished]

Before BENTON, BOWMAN, and SHEPHERD, Circuit Judges.

PER CURIAM.

Shurron S. Roberts pled guilty to conspiring to possess with intent to distribute over 100 grams of heroin and to being a felon in possession of a firearm. Roberts's counsel has filed a brief under *Anders v. California*, 386 U.S. 738 (1967), arguing

that the district court¹ erred in sentencing Roberts as a career offender and as an armed career criminal based on convictions that were over 15 years old. Roberts has filed a pro se brief and a letter pursuant to Federal Rule of Appellate Procedure 28(j) in which he also challenges these sentencing enhancements and claims that he received ineffective assistance of counsel. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

Because Roberts did not object in the district court, this court reviews application of the career-offender and armed-career-criminal enhancements only for plain error. *See United States v. Pirani*, 406 F.3d 543, 549-50 (8th Cir. 2005) (en banc) (errors not properly preserved are reviewed for plain error). This court concludes that the district court did not plainly err in determining that Roberts was a career offender based on his convictions for two controlled substance offenses, or in determining that he was an armed career criminal based on those two drug convictions and his Missouri conviction for second-degree assault. *See* U.S.S.G. §§ 4B1.1(a) (defining career offender); 4A1.2(e)(1) (count any prior sentence of imprisonment exceeding one year and one month that resulted in defendant being incarcerated during 15-year period before instant offense); U.S.S.G. § 4B1.4 (armed-career-criminal provision applicable to defendants subject to enhanced sentence under Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)); *United States v. Rodriguez*, 612 F.3d 1049, 1056 (8th Cir. 2010) (ACCA contains no time limit for predicate offenses).

As to Roberts's pro se arguments, this court finds no merit to his claim that, contrary to the holding of *Johnson v. United States*, 135 S. Ct. 2551 (2015), the district court relied on the ACCA's residual clause in concluding that the assault conviction qualified as an ACCA predicate; and the court declines to consider the

¹The Honorable Carol E. Jackson, United States District Judge for the Eastern District of Missouri.

ineffective-assistance claims on direct appeal. See *United States v. Ramirez-Hernandez*, 449 F.3d 824, 826-27 (8th Cir. 2006) (noting that ineffective-assistance claims are usually best litigated in collateral proceedings, where record can be properly developed).

Having conducted an independent review under *Penon v. Ohio*, 488 U.S. 75 (1988), this court finds no nonfrivolous issue.

The judgment is affirmed. Counsel's motion to withdraw is granted.

Sheet 1 - Judgment in a Criminal Case

United States District Court

Eastern District of Missouri

UNITED STATES OF AMERICA

v.

SHURRON S. ROBERTS

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER: 4:15 CR 115 CEJ

USM Number: 24535-044

Joseph M. Hogan

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 and 2 of the two-count Indictment on July 20, 2015

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 U.S.C. § 846, 21 U.S.C. § 841(b)(1)(B) and 21 U.S.C. § 841(a)(1)	Conspiracy to Possess with Intent to Distribute Heroin	January 31, 2015	1
18 U.S.C. § 922(g)(1), 18 U.S.C. § 924(e)	Felon in Possession of a Firearm - Armed Career Criminal	January 5, 2015	2

The defendant is sentenced as provided in pages 2 through 6 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) _____ 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.

January 12, 2016

Date of Imposition of Judgment



Signature of Judge

Name & Title of Judge

January 12, 2016

Date signed

DEFENDANT: SHURRON S. ROBERTS
CASE NUMBER: 4:15 CR 115 CEJ
District: Eastern District of Missouri

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 164 months.

This term consists of a term of 164 months on each of counts one and two, all such terms to be served concurrently.
This sentence shall run concurrently to the parole revocation in Docket No. 021-404B with the Missouri Department of Corrections.

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

The defendant be placed in a BOP facility in or as close as possible to St. Louis, Missouri. While in the custody of the Bureau of Prisons, it is recommended the defendant be evaluated for participation in the Residential Drug Abuse Program. Such recommendations are made to the extent they are consistent with the Bureau of Prisons policies.

☒ 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./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 p.m. on _____
☐ as notified by the United States Marshal
☐ as notified by the Probation or Pretrial Services Office

MARSHALS RETURN MADE ON SEPARATE PAGE

DEFENDANT: SHURRON S. ROBERTSCASE NUMBER: 4:15 CR 115 CEJDistrict: Eastern District of Missouri**SUPERVISED RELEASE**Upon release from imprisonment, the defendant shall be on supervised release for a term of four years

This term consists of a term of four years on each of counts one and two, all such terms to run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall 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 which he or she resides, works, is a student, or was convicted of a qualifying offense. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment

The defendant shall comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: SHURRON S. ROBERTS

CASE NUMBER: 4:15 CR 115 CEJ

District: Eastern District of Missouri

ADDITIONAL SUPERVISED RELEASE TERMS

While on supervision, the defendant shall comply with the standard conditions that have been adopted by this Court and shall comply with the following additional conditions. If it is determined there are costs associated with any services provided, the defendant shall pay those costs based on a co-payment fee established by the probation office.

The defendant shall refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of commencement of supervision and at least two periodic drug tests thereafter for use of a controlled substance.

The defendant shall participate in a substance abuse treatment program approved by the probation office, which may include substance abuse testing, counseling, Residential Re-entry Center placement, residential or inpatient treatment.

The defendant shall participate in educational services program(s) as directed by the probation office. Such program(s) may include High School Equivalency preparation, Adult Basic Education, Literacy, and other classes designed to improve the defendant's educational proficiency.

The defendant shall submit his person, residence, office, or vehicle to a search conducted by the probation office based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: SHURRON S. ROBERTSCASE NUMBER: 4:15 CR 115 CEJDistrict: Eastern District of Missouri**CRIMINAL MONETARY PENALTIES**

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

AssessmentFineRestitution

Totals:

\$200.00

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

☐ Restitution amount ordered pursuant to plea agreement _____

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

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

☐ The interest requirement is waived for the. ☐ fine ☐ restitution.

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

* 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: SHURRON S. ROBERTS
CASE NUMBER: 4:15 CR 115 CEJ
District: Eastern District of Missouri

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☒ Lump sum payment of \$200 special assessment due immediately, balance due
☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, or ☐ E below; or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ E below; or ☐ F below; or
- C ☐ Payment in equal _____ (e.g., equal, 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., equal, weekly, monthly, quarterly) installments of _____ over a period of _____ e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after Release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time: or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

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

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

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

- ☐ The defendant 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) penalties, and (8) costs, including cost of prosecution and court costs.



DEFENDANT: SHURRON S. ROBERTS

CASE NUMBER: 4:15 CR 115 CEJ

USM Number: 24535-044

UNITED STATES MARSHAL
RETURN OF JUDGMENT IN A CRIMINAL CASE

I have executed this judgment as follows:

The Defendant was delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

- ☐ The Defendant was released on _____ to _____ Probation
☐ The Defendant was released on _____ to _____ Supervised Release
☐ and a Fine of _____ ☐ and Restitution in the amount of _____

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

I certify and Return that on _____, I took custody of _____
at _____ and delivered same to _____
on _____ F.F.T. _____

U.S. MARSHAL E/MO

By DUSM _____

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

No: 16-1293

United States of America

Appellee

v.

Shurron S. Roberts

Appellant

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:15-cr-00115-CEJ-1)

ORDER

The petition for rehearing is denied as untimely.

October 17, 2017

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

/s/ Michael E. Gans