

NUMBER \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM 2017

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WILLIAM LEON RHODES, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

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

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## **I. QUESTIONS PRESENTED FOR REVIEW**

1. Whether the Government presented sufficient evidence to convict Rhodes of being a felon in possession of a firearm where the gun that was found in Rhodes's home was owned by someone else who testified about how it came to be in the home without Rhodes's knowledge.

2. Whether, if there was insufficient evidence to sustain Rhodes's conviction for being a felon in possession of a firearm, the district court then abused its discretion by revoking his term of supervised release on the basis of that conviction.

## II. TABLE OF CONTENTS

|       |                                                                                                                                                                                                                                                                                                                      |    |
|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| I.    | QUESTIONS PRESENTED FOR REVIEW .....                                                                                                                                                                                                                                                                                 | 1  |
| II.   | TABLE OF CONTENTS.....                                                                                                                                                                                                                                                                                               | 2  |
| III.  | TABLE OF AUTHORITIES .....                                                                                                                                                                                                                                                                                           | 4  |
| IV.   | OPINIONS BELOW .....                                                                                                                                                                                                                                                                                                 | 6  |
| V.    | JURISDICTION .....                                                                                                                                                                                                                                                                                                   | 6  |
| VI.   | STATUTES AND REGULATIONS INVOLVED .....                                                                                                                                                                                                                                                                              | 6  |
| VII.  | STATEMENT OF THE CASE .....                                                                                                                                                                                                                                                                                          | 8  |
| A.    | Federal Jurisdiction.....                                                                                                                                                                                                                                                                                            | 8  |
| B.    | Facts Pertinent to the Issue Presented.....                                                                                                                                                                                                                                                                          | 9  |
| 1.    | A firearm is recovered and Rhodes is charged.....                                                                                                                                                                                                                                                                    | 9  |
| 2.    | Trial .....                                                                                                                                                                                                                                                                                                          | 10 |
| 3.    | Revocation and sentencing .....                                                                                                                                                                                                                                                                                      | 16 |
| 4.    | The Fourth Circuit affirms Rhodes’s conviction and sentence...                                                                                                                                                                                                                                                       | 17 |
| VIII. | REASON FOR GRANTING THE PETITION .....                                                                                                                                                                                                                                                                               | 17 |
| I.    | The writ should be granted to determine whether the Government presented sufficient evidence to convict Rhodes of being a felon in possession of a firearm where the gun that was found in Rhodes’s home was owned by someone else who testified about how it came to be in the home without Rhodes’s knowledge..... | 17 |
| II.   | The writ should be granted to vacate the order revoking Rhodes’s supervised release based on a conviction that is not supported by sufficient evidence. ....                                                                                                                                                         | 22 |

|                                                                                                                                                                                                        |     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| IX. CONCLUSION .....                                                                                                                                                                                   | 24  |
| APPENDIX A: Opinion of the United States Court of Appeals for<br>the Fourth Circuit in <i>United States v. Rhodes</i> ,<br>700 F. App'x 276 (4th Cir. 2017) .....                                      | A-1 |
| APPENDIX B: Relevant portion of trial transcript containing jury's<br>verdict in <i>United States v. William Leon Rhodes</i> ,<br>USDC SDWV Case No. 2:16-cr-00202 .....                               | B-1 |
| APPENDIX C: Relevant portion of combined sentencing and revocation<br>hearing transcript for in <i>United States v. William Leon<br/>Rhodes</i> , USDC SDWV Case No. 2:16-cr-00202 .....               | C-1 |
| APPENDIX D: Judgment in a Criminal Case, <i>United States v. William<br/>Leon Rhodes</i> , USDC SDWV Case No. 2:16-cr-00202,<br>Dkt. No. 75 .....                                                      | D-1 |
| APPENDIX E: Supervised Release Revocation and Judgment Order,<br>Memorandum Opinion and Order, <i>United States v.<br/>William Leon Rhodes</i> , USDC SDWV Case No.<br>2:12-cr-00010, Dkt. No. 86..... | E-1 |

### III. TABLE OF AUTHORITIES

#### Cases

|                                                                           |        |
|---------------------------------------------------------------------------|--------|
| <i>United States v. Bailey</i> , 553 F.3d 940 (6th Cir. 2009).....        | 19     |
| <i>United States v. Blue</i> , 957 F.2d 106 (4th Cir. 1992) .....         | 19     |
| <i>United States v. Games-Perez</i> , 667 F.3d 1136 (10th Cir. 2012)..... | 20     |
| <i>United States v. Langley</i> , 62 F.3d 602 (4th Cir. 1995).....        | 18     |
| <i>United States v. Latham</i> , 578 F. App'x 312 (4th Cir. 2014).....    | 20     |
| <i>United States v. Moya</i> , 454 F.3d 390 (4th Cir. 2006) .....         | 18     |
| <i>United States v. Rhodes</i> , 700 F. App'x 276 (4th Cir. 2017).....    | 6, 17  |
| <i>United States v. Rusher</i> , 966 F.2d 868 (4th Cir. 1992).....        | 18, 19 |
| <i>United States v. Shorter</i> , 328 F.3d 167 (4th Cir. 2003).....       | 20     |
| <i>United States v. Soto</i> , 779 F.2d 558 (9th Cir.1986).....           | 19     |

#### Statutes

|                             |       |
|-----------------------------|-------|
| 18 U.S.C. § 922(g) .....    | 6     |
| 18 U.S.C. § 922(g)(1).....  | 8, 18 |
| 18 U.S.C. § 3231 .....      | 8, 9  |
| 18 U.S.C. § 3583 .....      | 8     |
| 18 U.S.C. § 3583(e) .....   | 7     |
| 18 U.S.C. § 3583(e)(3)..... | 22    |

|                        |      |
|------------------------|------|
| 18 U.S.C. § 3742 ..... | 8, 9 |
| 28 U.S.C. § 1254 ..... | 6    |
| 28 U.S.C. § 1291 ..... | 8, 9 |

## **Rules**

|                        |    |
|------------------------|----|
| Sup. Ct. R. 13.1.....  | 6  |
| Sup. Ct. R. 13.3 ..... | 6  |
| Sup. Ct. R. 10(c)..... | 18 |

#### **IV. OPINIONS BELOW**

The opinion of the United States Court of Appeals for the Fourth Circuit in *United States v. Rhodes*, 700 F. App'x 276 (4th Cir. 2017), is an unpublished opinion and is attached to this Petition as Appendix A. The first issue presented in this Petition was presented to the jury at trial. The relevant portion of trial transcript containing the jury's verdict is attached to this Petition as Appendix B. The second issue presented in this Petition was presented to the district court at the combined sentencing and revocation hearing for Rhodes. The relevant portion of that hearing transcript has been attached to this Petition as Appendix C. The judgment order imposing Rhodes's new sentence is attached to this Petition as Appendix D. The judgment order imposing Rhodes's revocation sentence is attached to this Petition as Appendix E.

#### **V. JURISDICTION**

This Petition seeks review of a judgment of the United States Court of Appeals for the Fourth Circuit entered on November 3, 2017. No petition for rehearing was filed. This Petition is filed within ninety days of the date the Fourth Circuit entered its judgment. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254 and Rules 13.1 and 13.3 of this Court.

#### **VI. STATUTES AND REGULATIONS INVOLVED**

The first issue presented in this Petition requires interpretation and application of 18 U.S.C. § 922(g), which provides, in pertinent part:

(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;

The second issue presented in this Petition requires interpretation and application of 18 U.S.C. § 3583(e), which provides, in pertinent part:

**(e) Modification of Conditions or Revocation** – The court may . . .

(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute . . . if the court . . . finds by a preponderance of the evidence that the defendant violated a condition of supervised release . . . .

## VII. STATEMENT OF THE CASE

### A. Federal Jurisdiction

This appeal arises from the final judgment and sentence imposed following the conviction of William Leon Rhodes (“Rhodes”) and the revocation of his term of supervised release. By order of the Fourth Circuit the cases were consolidated for appeal.

**2012 Case.** Rhodes was originally charged and convicted of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1), and sentenced in the Southern District of West Virginia on November 7, 2012. J.A. 15-26.<sup>1</sup> Original jurisdiction over offenses against the United States is given to the district courts by 18 U.S.C. § 3231. The authority to impose and revoke a term of supervised release is conferred by 18 U.S.C. § 3583. The district court entered an order revoking Rhodes’s supervised release on May 10, 2017. J.A. 260-263. Rhodes timely filed a notice of appeal on May 16, 2017. J.A. 266-267. The United States Court of Appeals for the Fourth Circuit has jurisdiction to review this matter pursuant to 18 U.S.C. § 3742 and 28 U.S.C. § 1291

**2016 Case.** On October 25, 2016, a grand jury in the Southern District of West Virginia returned an indictment charging Rhodes with being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). J.A. 30-31. A superseding indictment charging the same offense was returned on December 20, 2016. J.A. 32-33. Because

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<sup>1</sup> “J.A.” refers to the Joint Appendix prepared for the Fourth Circuit below.

that charge constitutes an offense against the United States, the district court had original jurisdiction pursuant to 18 U.S.C. § 3231. This is an appeal from the final judgment and sentence imposed after Rhodes was convicted on the count charged in the indictment. A judgment and commitment order was entered on May 10, 2017. J.A. 253-259. Rhodes filed a timely notice of appeal on May 16, 2017. J.A. 264-265. The United States Court of Appeals for the Fourth Circuit has jurisdiction pursuant to 18 U.S.C. § 3742 and 28 U.S.C. § 1291.

## **B. Facts Pertinent to the Issue Presented**

These consolidated cases arise from the same incident. On the night of June 17, 2016, police arrived at Rhodes's home near Spencer, West Virginia. A search of the home uncovered a firearm. As a result, Rhodes was charged with being a felon in possession of a firearm and alleged to have violated the terms of his supervised release.

### **1. A firearm is recovered and Rhodes is charged**

On June 17, 2016, police received information that a stolen vehicle might be present on Rhodes's property. Officers went to the home and spoke with Rhodes and requested consent to search his home. Rhodes agreed. J.A. 54-55. Police recovered a loaded .22 caliber revolver under a pillow in the master bedroom. J.A. 59. Officers also found a box of .22 caliber ammunition in the living room. J.A. 73. A records check showed that Rhodes was both a convicted felon and currently serving a term of

supervised release. J.A. 63. Rhodes was arrested and taken to the local sheriff's department, where he gave a videotaped statement. J.A. 78.

On July 14, 2016, Rhodes's probation officer filed a Petition for Warrant or Summons for Offender Under Supervision ("Petition"). J.A. 27-29. Rhodes had been on supervision since August 13, 2013, having served an eighteen-month sentence following a 2012 conviction for being a felon in possession of a firearm. J.A. 27. The Petition alleged that Rhodes had violated state, federal, or local laws in connection with the possession of the firearm found in his home, that he had illegally possessed that firearm, and that he had associated with other people involved in criminal activity. J.A. 27-28. The probation officer requested that Rhodes's term of supervised release be revoked. J.A. 29.

On October 25, 2016, Rhodes was charged in a one-count indictment with being a felon in possession of a firearm. J.A. 30-31. A superseding indictment charging Rhodes with the same offense was returned on December 20, 2016. J.A. 32-33.

## **2. Trial**

Trial began on January 20, 2017. J.A. 34-135. Rhodes and the Government stipulated to several facts regarding essential elements of the offense. J.A. 38-40. The only contested element was "whether possession has occurred." J.A. 40.

The Government's first witness was Nathan Stepp, a West Virginia State Trooper. J.A. 53-69. Stepp testified that he arrived at Rhodes's home on June 17, 2016 a little after midnight. J.A. 54. Stepp described the home as having a living room just

inside the front door, with two bedrooms to the left and the “master” bedroom to the right. J.A. 58, 67. Stepp asked Rhodes if he would consent to a search of his home, which he did, signing a consent form. J.A. 55. Stepp searched the master bedroom and the living room. In the master bedroom he found a “.22 caliber revolver underneath a pillow on the bed.” J.A. 59. Stepp also found a box for the revolver, with “a serial number matching the revolver itself” and an “extra cylinder for it” on a nightstand in the same room. J.A. 63. On cross examination Stepp confirmed that the master bedroom was “directly off of” the living room. J.A. 67.

The Government’s next witness was Benjamin Goodson, a deputy with the Roane County Sheriff’s Department. J.A. 70-74. Goodson assisted with the search of the master bedroom and testified that the revolver was found there, under the pillow. J.A. 72-73. He also testified about the box that was found on the nightstand. Finally, Goodson testified that he recovered a box of .22 caliber ammunition from the living room. J.A. 73.

The Government’s final witness was Matthew Cooper, who on June 17 was also a deputy with the Roane County Sheriff’s Department. J.A. 75-96. Cooper took a recorded statement from Rhodes following his arrest at about 5:30 in the morning. J.A. 78, 90. The Government played two portions of the interview for the jury. J.A. 84, 88. In one excerpt Rhodes said, of the revolver, “all I know is it’s a .22” and agreed that it had different cylinders with it. J.A. 202. Rhodes also agreed with Cooper’s description that the revolver “was located in your bedroom, along with a box . . . with

the extra cylinder.” *Id.* In the second, Cooper asked why “would it be under your bed?” J.A. 203. Rhodes answered that he “[d]idn’t want to let it sit in the house nowhere.” *Id.* Cooper also asked if Rhodes was “putting it in the bed to kinda keep it hid?”, to which Rhodes answered, “[y]eah.” *Id.* Rhodes explained that “I didn’t know exactly what was going on then” and that “I live there by myself 95% of the time.” *Id.* Cooper also testified that during the statement Rhodes referred to the revolver as “my pistol.” J.A. 86, 87. He also admitted, on cross examination, that Rhodes said the revolver belonged to his stepson. J.A. 94.

At the close of the Government’s case Rhodes moved for a judgment of acquittal, arguing that the Government had not presented sufficient evidence to prove Rhodes possessed the firearm. J.A. 99-100. The district court concluded there was “ample evidence of possession by the defendant of the revolver” and denied the motion. J.A. 101.

Rhodes’s first witness was Sheldon Ashby. J.A. 103-121. Ashby was Rhodes’s stepson, although he referred to Rhodes as “[m]y dad.” J.A. 105. At some time in 2016 prior to June 17, Ashby lived in Rhodes’s home (along with several other family members). J.A. 106. Ashby stayed in the very back bedroom and left some belongings behind when he moved out. J.A. 106-107. When he was shown the revolver Ashby testified that “[i]t’s mine” and that he bought it from his cousin, Calvin Saunders, sometime in May 2016. J.A. 108-109. The gun came in the box that the police recovered along with the extra cylinder. J.A. 109. At the time he lived at Rhodes’s

home, Ashby kept the gun “[u]nder the seat of my truck, locked up inside.” J.A. 110. He testified that he had never seen the revolver in Rhodes’s possession. J.A. 114.

On June 16, Ashby and his brother came to Spencer to retrieve his brother’s truck. When they arrived at Rhodes’s home it was “late.” J.A. 111. While he was there, Ashby “grabbed this pistol out from underneath the seat of my truck and took it in and put it either under the pillow or the mattress” in the master bedroom, off to the right of the living room. J.A. 112, 113, 114. This was “to keep from getting pulled over with it in Spencer, because my truck is very loud” due to it not having any mufflers. J.A. 112. Ashby explained that his truck was “[o]bnoxiously loud” and that “it was really late, and I was concerned about getting pulled over.” *Id.* He did not stop at Rhodes’s to retrieve the revolver after getting his brother’s truck because he “got a [text] message notifying me that if I did . . . the law would be called and I’d be arrested” based on a neighbor’s complaint about the noise. J.A. 113-114.

On cross examination, Ashby admitted that he knew Rhodes was a convicted felon who could not legally possess a firearm. J.A. 116. He also testified that he left the gun box in his bedroom when he moved out, not Rhodes’s bedroom. J.A. 118. He also conceded that he could have put the revolver in any room in the house, not just Rhodes’s bedroom under his pillow. J.A. 120-121. Ashby also admitted that he had no idea how the box of ammunition came to be in the living room. J.A. 121.

Rhodes's second witness was Ashby's cousin, Calvin Saunders. J.A. 122-127. Saunders testified that he bought the revolver from a sporting goods store in Spencer and then, in January or February 2016, sold it to Ashby. J.A. 124-125.

Finally, Rhodes called Sean McNees, an agent with the Bureau of Alcohol, Tobacco, and Firearms. J.A. 128-130. McNees testified that a trace summary report on the revolver confirmed that it was purchased by Saunders from a local sporting goods store. J.A. 129. Furthermore, the report did not show any instances in which the revolver had been reported stolen. J.A. 130.

Rhodes renewed his motion for a judgment of acquittal. The motion was denied. J.A. 131.

In its closing argument the Government argued that Rhodes had constructively possessed what he called "my pistol." J.A. 139. The Government stressed that the issue was possession, not ownership. *Id.* The location of the revolver, the box, and the ammunition all showed that Rhodes constructively possessed the revolver. The Government argued that Rhodes's statements to Cooper showed that he knew the revolver was in his bedroom. J.A. 140.

In his closing Rhodes argued that it was not enough to prove constructive possession to simply show that the revolver was found in Rhodes's home. J.A. 142. He argued that a convicted felon, knowing he could not legally possess a firearm, would not have allowed police to search his home had he known the revolver was there. J.A. 143, 144. That conclusion was bolstered by Ashby's testimony that the

revolver was his and that he put it in Rhodes's home just that night. No part of Ashby's testimony – including the reason he put the revolver in Rhodes's home – was contradicted by the Government. J.A. 144-148. The testimony of Ashby, Saunders, and McNees “has connected the dots” of the chain of possession of the revolver and Rhodes was “nowhere in that chain.” J.A. 150. As for Rhodes's statements to Cooper, they were made in the early morning hours and were “consistent with people that have been up all night and are not thinking clearly.” J.A. 151. While Rhodes did call the revolver “my pistol,” he also told Cooper it was his stepson's gun. J.A. 153.

On rebuttal, the Government argued that Rhodes's argument had “connected the dots, but they've connected the dots to the wrong puzzle.” J.A. 156. The issue was not ownership, but possession. *Id.* As to Ashby's testimony, the Government argued there was no “need to be evidence to refute that” because it was “somewhat self-refuting.” J.A. 157.

Rhodes was found guilty. J.A. 194.

On January 23, 2017, Rhodes filed a written motion for a judgment of acquittal, in which he argued that the Government did not prove that he constructively possessed the revolver. J.A. 207-213. The district court denied that motion in a brief written order. J.A. 12.

### **3. Revocation and sentencing**

On March 30, 2017, an amendment to the Petition was filed alleging a further violation of the law – being a felon in possession of a firearm, based on the jury’s verdict. J.A. 221.

A hearing was held on April 12, 2017, which served as a sentencing hearing and revocation hearing. J.A. 222-252. The district court first addressed the Petition and suggested that the parties proceed only on the first allegation – that is, that Rhodes possessed a firearm as a felon – and disregard the other allegations. J.A. 223-224. The parties agreed. J.A. 224. Therefore, the district court concluded that “the defendant has violated the terms of his supervised release in that the defendant did . . . possess a .22 caliber Heritage revolver.” J.A. 225-226. The district court also found that Rhodes’s supervised release should be revoked “in view of the nature of the violation being the same as the offense for which the defendant was on supervised release.” J.A. 226.

After hearing arguments from the parties, the district court sentenced Rhodes to a term of twenty-four months in prison, followed by a three-year term of supervised release, on the new felon-in-possession conviction. On the revocation, the district court imposed a sentence of eight months in prison, with a further supervised release term of twenty-eight months. The terms of imprisonment were ordered to run consecutively, while the supervised release terms were ordered to be served concurrently. J.A. 249, 250.

**4. The Fourth Circuit affirms Rhodes's conviction and sentence.**

The Fourth Circuit affirmed Rhodes's conviction and sentence in an unpublished opinion. *United States v. Rhodes*, 700 F. App'x 276 (4th Cir. 2017). Rhodes raised two issues on appeal: (1) that "insufficient evidence supports the jury's verdict" and (2) that "because the district court relied on the verdict in finding he violated his supervised release, the district court abused its discretion in revoking his supervision." *Id.* at 277. The court concluded that while "Rhodes relies heavily on his stepson's testimony . . . the jury was entitled to disbelieve the stepson." *Id.* In light of that, and the evidence that the gun was found in Rhodes's bedroom, the court concluded that "sufficient evidence supports the jury's verdict." *Id.* As a result, there was no abuse of discretion in the revocation of Rhodes's term of supervised release for committing the offense of being a felon in possession of a firearm. *Id.* at 277, n.

**VIII. REASONS FOR GRANTING THE WRIT**

**I. The writ should be granted to determine whether the Government presented sufficient evidence to convict Rhodes of being a felon in possession of a firearm where the gun that was found in Rhodes's home was owned by someone else who testified about how it came to be in the home without Rhodes's knowledge.**

Rhodes was convicted of being a felon in possession of a firearm, but no proof was ever presented that showed he actually possessed the weapon. Instead, the Government relied on a theory of constructive possession, that Rhodes exercised dominion and control over the gun. However, the jury heard testimony from the

actual owner of the gun, the person from whom he purchased it, and an explanation as to how the gun came to be in Rhodes's home without his knowledge. Conviction for possession on such evidence does not satisfy due process. The nature of the burden the Government bears to prove that a person constructively possesses a firearm is an important question of federal law that should be settled by this Court. Sup. Ct. R. 10(c).

In order to obtain a conviction under § 922(g)(1), the Government must prove that (1) the defendant was previously convicted of a crime punishable by imprisonment or more than one year; (2) after that conviction he voluntarily and intentionally possessed a firearm; and (3) the firearm had been shipped or transported in interstate commerce. *United States v. Langley*, 62 F.3d 602, 604 (4th Cir. 1995)(*en banc*). Possession “can be actual or constructive.” *United States v. Moya*, 454 F.3d 390, 395 (4th Cir. 2006). “Constructive” possession occurs “if it is shown ‘that the defendant exercised, or had the power to exercise, dominion and control over the item.’” *Id.* quoting *United States v. Rusher*, 966 F.2d 868, 878 (4th Cir. 1992).

In this case, there is no argument that Rhodes had previously been convicted of an offense with a term of imprisonment more than one year and that the firearms at issue had travelled in interstate commerce. The only issue is whether Rhodes voluntarily and intentionally possessed a firearm, specifically, by constructive possession. J.A. 38-40. Given Rhodes's behavior the night the revolver was discovered and the uncontradicted testimony of how the revolver came to be in his bedroom, no

reasonable jury could conclude that the evidence was sufficient to conclude that Rhodes exercised dominion and control over the firearm at issue in the indictment.

In *United States v. Blue*, 957 F.2d 106 (4th Cir. 1992), the court reversed a conviction for possession of a firearm by a felon that was based on constructive possession. Blue was a passenger in a car pulled over by a police officer. As the officer approached the car he saw Blue “dip” his shoulder “as if [he was] reaching under the seat with his right hand.” *Id.* at 107. A search of the car uncovered a revolver under Blue’s seat. The court found that evidence insufficient to justify a conclusion that Blue had constructive possession of the gun. Although the Government may prove constructive possession by showing “ownership, dominion, or control over the contraband itself or the premises or vehicle in which the contraband is concealed,” simply being in the vehicle was not sufficient: “mere presence as a passenger in a car from which the police recover weapons does not establish possession. The mere proximity of a weapon to a passenger in a car goes only to its accessibility, not to the dominion or control which must be proved to establish possession.” *Id.* at 108, quoting *United States v. Soto*, 779 F.2d 558, 560 (9th Cir.1986); *see also Rusher*, 966 F.2d at 878 (“[m]ere presence on the premises where the drugs were found . . . is insufficient to establish possession”); *United States v. Bailey*, 553 F.3d 940 (6th Cir. 2009)(finding evidence insufficient to show constructive possession of firearm found in car defendant was driving, where Government provided no other evidence).

Although the presence of contraband in someone's home "permits an inference of constructive possession," *United States v. Shorter*, 328 F.3d 167, 172 (4th Cir. 2003), it does not command such a finding. No reasonable jury could reach such a finding in this case, given the other circumstances related to Rhodes's conduct and the gun itself.

The Government is not required to prove that a defendant knew he was a felon in order to convict him of being a felon in possession of a firearm. *United States v. Games-Perez*, 667 F.3d 1136, 1140-1141 (10th Cir. 2012); *United States v. Latham*, 578 F. App'x 312, 316 (4th Cir. 2014). Nonetheless, whether the defendant knew of his status is relevant to evaluating his behavior. In this case there is no doubt that Rhodes was aware that he was a felon and could not legally possess a firearm. Indeed, the offense for which he was serving the term of supervised release that was revoked based on this conviction was being a felon in possession of a firearm. J.A. 27. In light of that knowledge it is inconceivable that Rhodes would have allowed police to search his home if he knew a firearm was present inside. Yet he did, readily consenting to the search when requested by Cooper. Such behavior is not the kind engaged in by someone who knows there is a firearm in the place the police are about to search, much less someone who has exercised dominion and control over that firearm.

Likewise, while the Government is not required to prove that a person owns a firearm to constructively possess it, whether or not the person is the rightful owner plays a part in the constructive possession calculus. In this case there is no dispute

that the owner of the revolver found in Rhodes's home was his stepson, Ashby. The Government produced no evidence refuting the testimony of Ashby and Saunders that Saunders originally bought the gun from a sporting goods store and later sold it to Ashby. J.A. 108-109, 124-125. That Rhodes did not own the revolver suggests that he did not exercise dominion and control over it.

Furthermore, Ashby provides an explanation for how the revolver wound up under Rhodes's pillow on the night the police searched his home. Ashby had put it there before driving to Spencer, afraid that local police might pull him over because his truck was "obnoxiously" loud. J.A. 112. Indeed, the truck was so loud that a neighbor of Rhodes made it known that if Ashby came back that evening she would call the police. J.A. 113-114. Although the Government called Ashby's testimony "somewhat self-refuting," J.A. 157, there is nothing he said that is impossible or contradicted by the testimony of others. The Government had an opportunity to show Ashby's testimony was false and could not do so.

Against this the Government can only marshal the vague statements Rhodes made to Cooper. Those statements were given in the early morning, in an interview that began at 5:30 a.m., and hours after the search had recovered the revolver. J.A. 90. While Rhodes called the gun "my pistol," he also explained that it belonged to his stepson. J.A. 86, 87, 94. The confusion is evident from Cooper's questions about the box, which he describes as being "between your mattress and the bed," when it was

actually found on the nightstand in plain view. J.A. 63, 202. Such contradictory statements cannot overcome the factors outlined above.

The Government did not present any evidence that anyone ever saw the revolver in Rhodes's hands. Therefore, it could only proceed on the theory that Rhodes constructively possessed it by exercising dominion and control over the revolver. To do so would require Rhodes to have known that the revolver was in his home. Consideration of all the evidence would lead a reasonable jury to conclude that Rhodes did not have such knowledge. As a result, there was insufficient evidence to convict him of being a felon in possession of a firearm

**II. The writ should be granted to vacate the order revoking Rhodes's supervised release based on a conviction that is not supported by sufficient evidence.**

A district court may revoke a defendant's term of supervised release and sentence him to prison only if the court "finds by a preponderance of the evidence that the defendant violated a condition of supervised release." 18 U.S.C. § 3583(e)(3). In this case, although the Petition alleged several different violations of Rhodes's conditions of supervised release (all related to the events of June 17), at the revocation hearing the district court suggested, and the parties agreed, to proceed only on the first – that Rhodes illegally possessed a firearm as a felon. J.A. 27-28, 223-224. When asked if Rhodes agreed to that process, counsel explained that while "we're not going to dispute that the government has sufficient evidence to show that the jury did return a guilty verdict" he would not admit the violation. J.A. 224. The district court

explained that “I’m not expecting him to admit it. I’m just expecting you to admit he was convicted of it.” *Id.*

With that understanding, the district court proceeded to elicit the agreement of the parties that Rhodes “does stand convicted of the offense of convicted felon in possession of a firearm” and that it was “a condition of the defendant’s supervised release . . . that he not possess a firearm, which is shown by the conviction just noted to have been a condition that was violated.” J.A. 224, 225. Other than agreeing with that statement, neither party had any additional evidence to present with respect to the Petition. J.A. 225. The district court therefore found that Rhodes had violated his supervised release by possessing the revolver. J.A. 225-226. The district court revoked Rhodes’s term of supervised release “in view of the nature of the violation being the same as the offense for which the defendant was on supervised release.” J.A. 226.

It is clear that the district court revoked Rhodes’s term of supervised release based on his conviction for being a felon in possession of a firearm. If, as argued above, that there is insufficient evidence to support that conviction and it must be reversed, then the order revoking Rhodes’s supervised release based only on that conviction must similarly be vacated.

## IX. CONCLUSION

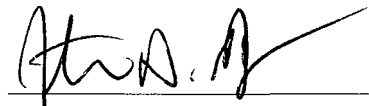
For the reasons stated, the Supreme Court should grant certiorari in this case.

Respectfully submitted,

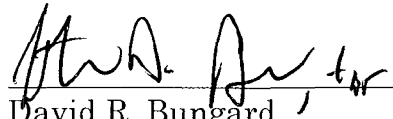
**WILLIAM LEON RHODES**

By Counsel

**CHRISTIAN M. CAPECE**  
**FEDERAL PUBLIC DEFENDER**

A handwritten signature in black ink, appearing to read "Jonathan D. Byrne", written over a horizontal line.

Jonathan D. Byrne  
Research & Writing Specialist  
*Counsel of Record*

A handwritten signature in black ink, appearing to read "David R. Bungard", written over a horizontal line.

David R. Bungard  
Assistant Federal Public Defender

NUMBER \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM 2017

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WILLIAM LEON RHODES, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

---

APPENDIX A

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

---

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**DAVID R. BUNGARD**

**ASSISTANT FEDERAL PUBLIC DEFENDER**

700 Fed.Appx. 276 (Mem)

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of Appeals 4th Cir. Rule 32.1.

United States Court of Appeals,  
Fourth Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

William Leon RHODES, Defendant-Appellant.

United States of America, Plaintiff-Appellee,

v.

William Leon Rhodes, Defendant-Appellant.

No. 17-4307, No. 17-4318

|  
Submitted: October 27, 2017

|  
Decided: November 3, 2017

Appeals from the United States District Court for the Southern District of West Virginia, at Charleston. John T. Copenhaver, Jr., District Judge. (2:16-cr-00202-1; 2:12-cr-00010-1)

#### **Attorneys and Law Firms**

Christian M. Capece, Federal Public Defender, Jonathan D. Byrne, Research & Writing Specialist, David R. Bungard, Assistant Federal Public Defender, Charleston, West Virginia, for Appellant. Carol A. Casto, United States Attorney, Meredith George Thomas, Assistant United States Attorney, Charleston, West Virginia, for Appellee.

Before WILKINSON and HARRIS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

#### **Opinion**

Affirmed by unpublished per curiam opinion.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In these consolidated appeals, William Leon Rhodes appeals the district court's judgment entered after a jury convicted him of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1) (2012), and the district court's judgment order revoking his supervised release on the basis of the jury's verdict. \*277 Rhodes contends that insufficient evidence supports the jury's verdict and that, because the district court relied on the verdict in finding he violated his supervised release, the district court abused its discretion in revoking his supervision. We disagree, and accordingly affirm the district court's judgments.

“[W]e review de novo a district court's denial of a motion for judgment of acquittal.” United States v. Fuertes, 805 F.3d 485, 501-02 (4th Cir. 2015). In assessing the sufficiency of the evidence, we determine whether there is substantial evidence to support the conviction when viewed in the light most favorable to the government. United States v. Engle, 676 F.3d 405, 419 (4th Cir. 2012). “Substantial evidence is evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of guilt beyond a reasonable doubt.” *Id.* In making this determination, we may not resolve conflicts in the evidence or evaluate witness credibility. United States v. Dinkins, 691 F.3d 358, 387 (4th Cir. 2012). Thus, “reversal for insufficiency must be confined to cases where the prosecution's failure is clear.” Engle, 676 F.3d at 419 (internal quotation marks omitted).

Rhodes contends that the Government failed to establish that he constructively possessed the firearm, a Heritage revolver. A person has constructive possession over contraband if he has “knowledge of the presence of the contraband” and “ownership, dominion, or control over the contraband or the premises or vehicle in which the contraband was concealed.” United States v. Herder, 594 F.3d 352, 358 (4th Cir. 2010). Constructive possession may be proven by either direct or circumstantial evidence, considering the totality of the circumstances surrounding the defendant's alleged possession of the item. *Id.* A jury may infer that a defendant constructively possessed firearms that were found within his residence if the residence is “not so large, and the weapons were not so well hidden, as to prohibit a reasonable fact finder from concluding that [the defendant] was aware of their presence.” United States v. Shorter, 328 F.3d 167, 172 (4th Cir. 2003).

We conclude that sufficient evidence supports the jury's verdict.\* Officers found the firearm in the master bedroom of Rhodes' residence and Rhodes admitted that he lived alone 95 percent of the time. There is no dispute that Rhodes slept in the master bedroom. Moreover, the firearm was not well hidden, and the jury could have inferred that Rhodes was aware that there was a firearm under his pillow, and that he kept the firearm under the pillow to have immediate access to it. While Rhodes relies heavily on his stepson's testimony in support of his argument, the jury was entitled to disbelieve the stepson.

\*  
— Because we conclude that sufficient evidence supports the jury's verdict, we discern no abuse of discretion in the district court's decision to revoke Rhodes' supervised release based on the jury's verdict. *See United States v. Padgett*, 788 F.3d 370, 373 (4th Cir. 2015) (stating standard of review).

Accordingly, we affirm the district court's judgments. 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*

## All Citations

700 Fed.Appx. 276 (Mem)

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NUMBER \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM 2017

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WILLIAM LEON RHODES, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

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APPENDIX B

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

---

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*Counsel for Petitioner*

**CHRISTIAN M. CAPECE**

**FEDERAL PUBLIC DEFENDER**

**DAVID R. BUNGARD**

**ASSISTANT FEDERAL PUBLIC DEFENDER**

1           We, the jury, find the defendant, William Leon Rhodes,  
2 guilty of the charge contained in the one-count superseding  
3 indictment.

4           Dated January 11, 2017, and signed by Foreperson, Randy  
5 Hendricks.

6           THE COURT: Thank you.

7           And the parties may be seated.

8           Ladies and gentlemen, I'm going to ask you individually  
9 whether or not this is your individual verdict of guilty on  
10 the single-count in this case.

11           And if it is your individual verdict, and your  
12 understanding that it is that of all 12 of you, you would  
13 answer "Yes." Otherwise, "No."

14           And so with that: Is this your individual verdict, and  
15 your understanding that it is that of all 12 of you?

16           Mr. Brabbin?

17           JUROR BRABBIN: Yes, it is.

18           THE COURT: Mr. Vickers?

19           JUROR VICKERS: Yes.

20           THE COURT: Ms. McCloud?

21           JUROR MCCLOUD: Yes.

22           THE COURT: And, Mr. Hall?

23           JUROR HALL: Yes.

24           THE COURT: And, Ms. Waters?

25           JUROR WATERS: Yes.

1 THE COURT: And, Mr. Moore?

2 JUROR MOORE: Yes.

3 THE COURT: Ms. Jordan?

4 JUROR JORDAN: Yes, sir.

5 THE COURT: And, Ms. Copen?

6 JUROR COPEN: Yes.

7 THE COURT: Mr. Burton?

8 JUROR BURTON: Yes.

9 THE COURT: Ms. Ferguson?

10 JUROR FERGUSON: Yes.

11 THE COURT: Mr. Meadows?

12 JUROR MEADOWS: Yes.

13 THE COURT: Mr. Hendricks?

14 JUROR HENDRICKS: Yes.

15 THE COURT: Thank you.

16 Thank you, ladies and gentlemen.

17 And let me ask whether or not counsel have anything  
18 further at this moment before the jury is excused?

19 MS. THOMAS: No, Your Honor.

20 MR. BUNGARD: No, Your Honor.

21 THE COURT: Thank you.

22 Ladies and gentlemen, I thank you very much for your  
23 service, as do all of the parties and the Court generally.  
24 A number of you, particularly from Wood County and Nicholas  
25 County, have such a long distance to travel. It is

NUMBER \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM 2017

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WILLIAM LEON RHODES, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

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APPENDIX C

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

---

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**CHRISTIAN M. CAPECE**  
**FEDERAL PUBLIC DEFENDER**

**DAVID R. BUNGARD**  
**ASSISTANT FEDERAL PUBLIC DEFENDER**

1 P-R-O-C-E-E-D-I-N-G-S 1:32 p.m.

2 THE CLERK: All rise.

3 THE COURT: Good afternoon. Please be seated.

4 THE CLERK: The case before the Court is the  
5 *United States of America versus William Leon Rhodes*,  
6 Criminal Numbers 2:16-cr-00202 and 2:12-cr-00010.

7 Would counsel note their appearance for the record,  
8 please.

9 MS. THOMAS: Meredith George Thomas on behalf of  
10 the United States.

11 MR. BUNGARD: David Bungard, Your Honor, here with  
12 Mr. Rhodes.

13 THE COURT: Thank you.

14 THE CLERK: Will defendant please stand and be  
15 sworn and raise your right hand.

16 **DEFENDANT, WILLIAM LEON RHODES, SWORN**

17 THE CLERK: Thank you.

18 THE COURT: I think it would be well to take up  
19 first the supervised release petition.

20 Do the parties have any other notion about that?

21 MS. THOMAS: No, Your Honor. That's fine.

22 MR. BUNGARD: No, Your Honor.

23 THE COURT: And let me ask whether or not it would  
24 be agreeable with the parties that Violation Number 1 be  
25 treated as simply the defendant's having been convicted of

1 the offense for which he's here for sentencing today in  
2 2:16-cr-00202, and, otherwise, that Violation Number 2 be  
3 considered, and Violation Number 3 not be considered. That  
4 is, with respect to the petition that seeks revocation of  
5 supervised release.

6 MR. BUNGARD: Your Honor, I don't have any  
7 objection going forward in that manner. I would just want  
8 the record to reflect -- and this is solely for purposes of  
9 protecting Mr. Rhodes' appellate rights -- is that we're not  
10 going to dispute that the government has sufficient evidence  
11 to show that the jury did return a guilty verdict in that  
12 case, as opposed to just admitting that violation.

13 THE COURT: I'm not expecting him to admit it.  
14 I'm just expecting you to admit that he was convicted of it.

15 MR. BUNGARD: That's correct, Your Honor. That's  
16 fine.

17 THE COURT: Does that approach sound satisfactory  
18 to the government?

19 MS. THOMAS: Yes, Your Honor.

20 THE COURT: Thank you.

21 If that is the case then, let me ask whether or not it  
22 is agreed by the parties, including the defendant, that he  
23 does stand convicted of the offense of convicted felon in  
24 possession of a firearm, an offense which is alleged to have  
25 occurred on or about June 16 or 17, 2016, having been

1 convicted of that offense by virtue of a verdict by the jury  
2 in Case Number 2:16-00202 in this Court.

3 Is that agreed?

4 MR. BUNGARD: Yes.

5 THE DEFENDANT: Yeah.

6 THE COURT: And the government, of course,  
7 concurs, I take it?

8 MS. THOMAS: Yes, Your Honor.

9 THE COURT: And, secondly, is it agreed that a  
10 condition of the defendant's supervised release was that he  
11 not possess a firearm, which is shown by the conviction just  
12 noted to have been a condition that was violated?

13 Is that satisfactory with the parties as well?

14 MS. THOMAS: It is with the government, Your  
15 Honor.

16 MR. BUNGARD: Yes, Your Honor.

17 THE COURT: And let me ask the parties whether or  
18 not you have any further evidence with respect to the  
19 supervised release petition?

20 MS. THOMAS: No, Your Honor.

21 MR. BUNGARD: No, Your Honor.

22 THE COURT: If not, the Court finds the defendant  
23 has violated the terms of his supervised release in that the  
24 defendant did, on or about June 16 or 17, 2016, in Roane  
25 County, West Virginia, possess a .22 caliber Heritage

1 revolver in his residence at a time when the defendant had  
2 not had his civil right to possess a firearm restored after  
3 having been convicted in this Court of the offense of felon  
4 in possession of a firearm in 2012, and having been  
5 convicted of grand larceny in the state courts of West  
6 Virginia in 1990.

7 Do the parties wish findings on any other matter?

8 MS. THOMAS: Not with regards to the supervised  
9 release, Your Honor.

10 MR. BUNGARD: No, Your Honor.

11 THE COURT: And do the parties wish to be heard on  
12 the question of revocation with respect to that matter?

13 MS. THOMAS: The United States will ask that Mr.  
14 Rhodes' supervised release be revoked.

15 MR. BUNGARD: Your Honor, I'm not going to argue  
16 that point.

17 THE COURT: And the Court does find it  
18 appropriate, particularly in view of the nature of the  
19 violation being the same as the offense for which the  
20 defendant was on supervised release, does find it  
21 appropriate to revoke supervised release, and the Court  
22 accordingly does so.

23 Are the parties in agreement that based on the grade of  
24 violation which the Court finds to be a violation B -- that  
25 is, a Grade B, together with defendant's Criminal History

NUMBER \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM 2017

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WILLIAM LEON RHODES, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

---

APPENDIX D

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

---

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*Counsel for Petitioner*

**CHRISTIAN M. CAPECE**  
**FEDERAL PUBLIC DEFENDER**

**DAVID R. BUNGARD**  
**ASSISTANT FEDERAL PUBLIC DEFENDER**

## UNITED STATES DISTRICT COURT

Southern District of West Virginia

UNITED STATES OF AMERICA

v.

WILLIAM LEON RHODES

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:16-00202

USM Number: 10759-088

David R. Bungard, Assistant Federal Public Defender

Defendant's Attorney

## THE DEFENDANT:

☐ pleaded guilty to count(s) \_\_\_\_\_☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.☒ was found guilty on count(s) one of the one-count indictment.  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

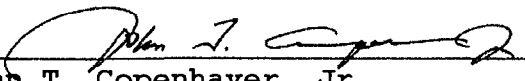
| Title & Section                         | Nature of Offense                | Offense Ended | Count |
|-----------------------------------------|----------------------------------|---------------|-------|
| 18 U.S.C. §§ 922(g)(1)<br>and 924(a)(2) | Felon in Possession of a Firearm | 6/17/2016     | One   |

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) \_\_\_\_\_ ☐ 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.

4/12/2017

Date of Imposition of Judgment

  
 John T. Copenhaver, Jr.  
 United States District Judge

Name and Title of Judge

5/10/2017

Date

DEFENDANT: WILLIAM LEON RHODES  
CASE NUMBER: 2:16-00202**IMPRISONMENT**

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

**TWENTY-FOUR (24) MONTHS** - The 24-month term of imprisonment shall run consecutively to the 8-month term of imprisonment imposed in 2:12-00010 upon revocation of supervised release.

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

That the defendant be designated to an institution as close to Ravenswood, West Virginia, as feasible.

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

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

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

DEFENDANT: WILLIAM LEON RHODES  
CASE NUMBER: 2:16-00202

### **SUPERVISED RELEASE**

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

**THREE (3) YEARS** - The 3-year term of supervised release shall run concurrently with the 28-month term of supervised release imposed in Criminal No. 2:12-00010.

### **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 cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ 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)*
6. ☐ 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: WILLIAM LEON RHODES  
CASE NUMBER: 2:16-00202**STANDARD CONDITIONS OF SUPERVISION**

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

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

**U.S. Probation Office Use Only**

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

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

Date \_\_\_\_\_

DEFENDANT: WILLIAM LEON RHODES

CASE NUMBER: 2:16-00202

### **ADDITIONAL SUPERVISED RELEASE TERMS**

1. The defendant shall submit to random urinalysis or any other drug screening method whenever the same is deemed appropriate by the probation officer and shall participate in a substance abuse program, including in-patient substance abuse treatment, as directed by the probation officer. The defendant shall not use any method or device to evade a drug screen.
2. The defendant shall pay the special assessment within the time and as directed by the court.
3. If the defendant is unemployed, the probation officer may direct the offender to register and remain active with Workforce West Virginia or similar organization.
4. As directed by the probation officer, the defendant shall make copayments for drug testing and drug treatment services at rates determined by the probation officer in accordance with a court-approved schedule based on ability to pay and availability of third-party payments.
5. A term of community service is imposed on every offender on supervised release or probation. Fifty hours of community service is imposed on every offender for each year the offender is on supervised release or probation. The obligation for community service is waived if the offender remains fully employed or actively seeks such employment throughout the year.

DEFENDANT: WILLIAM LEON RHODES  
 CASE NUMBER: 2:16-00202

### 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> |
| <b>TOTALS</b> | \$ 100.00         | \$                      | \$          | \$                 |

☐ 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> |
|----------------------|---------------------|----------------------------|-------------------------------|
|                      |                     |                            |                               |
|                      |                     |                            |                               |
|                      |                     |                            |                               |
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|                      |                     |                            |                               |
|                      |                     |                            |                               |

|               |    |      |    |      |
|---------------|----|------|----|------|
| <b>TOTALS</b> | \$ | 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: WILLIAM LEON RHODES  
CASE NUMBER: 2:16-00202

### 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 \$100 special assessment shall be paid out of prison earnings at the rate of \$10 per month commencing on August 1, 2017, with payment due on the first day of each month thereafter until paid in full.

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) JVT A assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

NUMBER \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM 2017

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WILLIAM LEON RHODES, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

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APPENDIX E

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

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*Counsel for Petitioner*

**CHRISTIAN M. CAPECE**  
**FEDERAL PUBLIC DEFENDER**

**DAVID R. BUNGARD**  
**ASSISTANT FEDERAL PUBLIC DEFENDER**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 2:12-00010

WILLIAM LEON RHODES

SUPERVISED RELEASE REVOCATION AND JUDGMENT ORDER  
MEMORANDUM OPINION AND ORDER

On April 12, 2017, the United States of America appeared by Meredith George Thomas, Assistant United States Attorney, and the defendant, William Leon Rhodes, appeared in person and by his counsel, David R. Bungard, Assistant Federal Public Defender, for a hearing on the petition on supervised release and amendment thereto submitted by United States Probation Officer Justin L. Gibson. The defendant commenced a three-year term of supervised release in this action on August 13, 2013, as more fully set forth in the Judgment Including Sentence Under the Sentencing Reform Act entered by the court on November 8, 2012.

The court heard the admissions of the defendant and the representations and argument of counsel.

For reasons noted on the record of this proceeding, which are ORDERED incorporated herein by reference, the court found that the defendant has violated the conditions of supervised release in the following respects: (1) the defendant committed the federal crime of felon in possession of a firearm as evidenced by the guilty verdict returned by the jury on January 11, 2017, with respect to the one-count superseding indictment returned on December 20, 2016, in Case No. 2:16-00202 charging a violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) that took place on June 17, 2016, the defendant having been found to be in possession of a Heritage .22 caliber revolver; and (2) the defendant violated supervised release by possessing a firearm as set forth above; all as set forth in the petition on supervised release and amendment thereto.

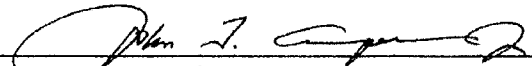
And the court finding, as more fully set forth on the record of the hearing, that the violations warrant revocation of supervised release and, further, that it would unduly depreciate the seriousness of the violations if supervised release were not revoked, it is ORDERED that the supervised release previously imposed upon the defendant in this action be, and it hereby is, revoked.

And the court having complied with the requirements of Rule 32(a)(1)(B) and (C) of the Federal Rules of Criminal Procedure, and finding, after considering the factors set forth in 18 U.S.C. § 3583(e), that the defendant should be confined to the extent set forth below, it is accordingly ORDERED that the defendant be, and he hereby is, committed to the custody of the United States Bureau of Prisons for imprisonment for a period of EIGHT (8) MONTHS, which shall run consecutively to the 24-month term imposed in Criminal No. 2:16-00202, to be followed by a term of twenty-eight (28) months of supervised release, which term shall run concurrently with the three-year term imposed in Criminal No. 2:16-00202, upon the standard conditions of supervised release now in effect in this district as promulgated by the Administrative Office of the United States Courts (National Form AO 245B) and the standard conditions as set forth in Local Rule 32.3.

The defendant was remanded to the custody of the United States Marshal.

The Clerk is directed to forward copies of this written opinion and order to the defendant, all counsel of record, the United States Probation Department, and the United States Marshal.

DATED: May 10, 2017

  
\_\_\_\_\_  
John T. Copenhaver, Jr.  
United States District Judge