

IN THE
Supreme Court of the United States

TYRONE MAURICE WILLIAMS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether Mr. Williams received a substantively unreasonable sentence by the trial court's error in departing upwardly despite an undisputed legally false criminal history?

Whether the Trial Court erred in failing to consider Mr. Williams' efforts at post-conviction and sentencing rehabilitation under *Pepper v. United States*, 131 S. Ct. 1229, 562 U. S. 476 (2011)?

TABLE OF CONTENTS

	<u>Page</u>
QUESTION PRESENTED	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
OPINION BELOW.....	1
JURISDICTION.....	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THE WRIT	8
Mr. Williams’ sentence continues to be unreasonable where the underling basis of his criminal history is legally false and has not been accounted for by the sentencing court, and the trial court in Mr. Williams’ most recent sentencing failed to consider his post- sentencing rehabilitation.	8
CONCLUSION.....	14
APPENDIX TO PETITION FOR WRIT OF CERTIORARI:	
Appendix A – Opinion, <i>United States v. Tyrone Maurice Williams</i> , No. 17-4333 of the United States Court of Appeals for the Fourth Circuit Decided December 19, 2017	App-1
Appendix A – Judgment, <i>United States v. Tyrone Maurice Williams</i> , No. 17-4333 of the United States Court of Appeals for the Fourth Circuit Filed December 19, 2017	App-8
Appendix C – Amended Judgment in a Criminal Case, <i>United States v. Tyrone Maurice Williams</i> of the United States District Court for the Eastern District of North Carolina, Greenville, No. 4:14-cr-00043-FL-1 Filed May 17, 2017	App-10

TABLE OF AUTHORITIES

Page

CASES

<i>Gall v. United States</i> , 552 U.S. 38 (2007)	9, 14
<i>Pepper v. United States</i> , 131 S. Ct. 1229, 562 U.S. 472 (2011)	1, 12
<i>United States v. Evans</i> , 526 F.3d 155 (4th Cir. 2008)	9
<i>United States v. Hernandez-Villanueva</i> , 473 F.3d 118 (4th Cir. 2007)	9
<i>United States v. Pauley</i> , 511 F.3d 68 (4th Cir. 2007)	15
<i>United States v. Simmons</i> , 649 F.3d 140 (4th Cir. 2007)	3
<i>United States v. Simmons</i> , 649 F.3d 237 (4th Cir. 2011)	6, 10, 11
<i>United States v. Tyrone Maurice Williams</i> , No. 15-4121, filed 18 November 2016	5, 6
<i>United States v. Tyrone Maurice Williams</i> , No. 17-4333, December 19, 2017.	1, 4

STATUTES

18 U.S.C. § 922(g)(1)	2
18 U.S.C. § 924(c)	5, 12, 14
18 U.S.C. § 924(c)(1)(A)	2
18 U.S.C. § 1951	2
18 U.S.C. § 3553(a)	2, 9, 10, 14, 15
28 U.S.C. § 1254(1)	2

SENTENCING GUIDELINES

U.S.S.G. § 2B3.1.....	14
U.S.S.G. § 2B3.1(b)	5
U.S.S.G. § 2B3.1(b)(3)	5, 14
U.S.S.G. § 2B3.1(b)(4)	14
U.S.S.G. § 2B3.1(b)(3)(C)	14
U.S.S.G. § 3D1.4	5

CONSTITUTION

Const. Amend. V	2
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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

_____, 2018

Tyrone Maurice Williams, Petitioner

vs.

United States of America, Respondent

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

PETITION FOR WRIT OF CERTIORARI

The Petitioner, Tyrone Williams (herein “Mr. Williams” or “Petitioner”), respectfully prays that a writ of certiorari issue to review the opinion and Judgment of the United States Court of Appeals for the Fourth Circuit in case No. 17-4333, entered on 19 December 2017.

OPINION BELOW

The opinion below is reported in the Fourth Circuit, NO. C.A. 17-1433.

JURISDICTION

The Court of Appeals entered its judgment 19 December 2017. Jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Mr. Williams asserts the trial court, in issuing its resentencing and amended judgment in this matter, violated his right to Due Process under the Fifth Amendment to the U.S. Constitution and that court erred in its application of the 18 U.S.C. § 3553(a) factors.

STATEMENT OF THE CASE

A. Procedural Background.

On 13 May 2014, a grand jury sitting in the Eastern District of North Carolina indicted petitioner, Mr. Williams, on charges of violating the Hobbs Act, discharging a firearm in the course of a robbery, being a felon in possession of a firearm, and bank robbery. See 18 U.S.C. §§ 1951, 924(c)(1)(A), 922(g)(1), and 2133(a).

The indictment returned against Mr. Williams alleged in Count One that he had on 24 July 2012, robbed by actual force and violence a Dollar General in New Bern, North Carolina of approximately \$600.00. Count Two alleged on 24 July 2012, during the course of the robbery Mr. Williams used and discharged a firearm. Count Three alleged that on 16 August 2012, Mr. Williams was a felon in possession of a firearm. Count Four alleged that on 11 February 2014, Mr. Williams robbed the First Flight Credit Union in New Bern of approximately \$4,373.00.

On 11 September 2014, Mr. Williams, through counsel, caused to be filed a Motion to Vacate a 2006 federal conviction for felony possession of a firearm that was predicated on a North Carolina state felony. On the North Carolina State felony, Mr. Williams had been ordered to serve 4 to 5 months. The Motion to Vacate was filed in the Western District of Tennessee pursuant to the Fourth Circuit's seminal case of *United States v. Simmons*, 649 F.3d 140 (4th Cir. 2007)(*en banc*), where Mr. Williams was and remains legally innocent of the 2006 felon in possession charge. The Motion to Vacate remains pending as of the date of this petition's filing date.

On 10 October 2014, Mr. Williams pleaded guilty to all four counts of his indictment without a plea agreement. Sentencing was held on 21 January 2015, before the Honorable Terrance Boyle at which Mr. Williams received a sentence of 480 months. On 27 January 2015, Judge Boyle, *sua sponte*, reconvened Court and resentenced Mr. Williams to 360 months.

On 18 November 2016, the Fourth Circuit Court of Appeals vacated the 480-month sentence, without consideration as to the 360-month sentence, on the basis that the 480-month sentence was substantively unreasonable. The Fourth Circuit Court of Appeals remanded the matter back for resentencing before a different district court judge.

On 11 May 2017, the Honorable Judge Louise Flanagan resentenced Mr. Williams to a total of 308 months. The trial court determined that the *Simmons* Motion to Vacate was not before the court, and refused to consider the issue as a

basis to lower Mr. Williams' criminal history or as a basis for a variance or departure. Moreover, the trial court gave no apparent weight to Mr. Williams' proffered post-sentencing rehabilitation. Mr. Williams timely appealed the judgment of his resentencing. *United States v. Tyrone Maurice Williams*, (No. 17-4333, December 19, 2017).

B. Factual Background.

It is alleged that, on or about 24 July 2012, in New Bern, North Carolina Mr. Williams went into a Dollar General Store; he was carrying a gun and his face was covered. As he entered, Mr. Williams fired two shots at the store's clerks, hitting the first in the stomach and the second in the arm and face. Mr. Williams left the store with approximately \$600.00. The next month on or around 16 August 2012, the Winterville, North Carolina police found Mr. Williams in possession of a gun and he was arrested.

The government further alleged that on or about 11 February 2014, Mr. Williams used a note to rob a federal credit union in New Bern, North Carolina, stealing in excess of \$4,000.00. The New Bern Police department ("NBPD") responded and observed Mr. Williams walking in the area and Mr. Williams gave chase upon their approach. After his arrest, Mr. Williams was found in possession of stolen bank money. Mr. Williams, upon his arrest, confessed to the Dollar General robbery and shooting in 2012. A federal grand jury indicted Mr. Williams, bringing charges addressing the three offense dates. Mr. Williams pled guilty without a plea

agreement to each of the four counts in United States District Court on or about 10 October 2014.

Following the plea, the probation office calculated Mr. Williams' imprisonment range under the sentencing guidelines. The three counts of conviction for the robbery and felony in possession offenses were grouped, yielding a combined adjusted offense level of 31—with 10 level enhancements from the base offense level for causing life threatening bodily injury to victims and abducting victims. See U.S.S.G. §§ 2B3.1(b), 3D1.4. Acceptance of responsibility reduced the total offense level to 28, and, when combined with Mr. Williams's criminal history category IV, he faced an imprisonment range of 110 to 137 months. Additionally, he faced the consecutive 120 months pursuant to 18 U.S.C. § 924(c). There was no objection lodged by Mr. Williams to the PSR, and he was initially sentenced on 21 January 2015.

A cold reading of the transcript from this initial sentencing rings with passion and emotion where both victims from the Dollar General robbery allocuted. The court was clearly moved by this allocution, and issued a sentence of 480 months, upwardly departing by 223 months, nearly double the minimum guideline calculation. The Court, recognizing its passion, called a resentencing approximately a week later and attempted, without jurisdiction, to resentence Mr. Williams to 360 months. Mr. Williams appealed both sentences.

This case was the subject of a recent unpublished opinion by the Fourth Circuit, *United States v. Tyrone Maurice Williams*, No. 15-4121, filed 18 November

2016. The Fourth Circuit Court of Appeals did not consider the 360-month sentence, and considered only the 480-month sentence and found it to be substantively unreasonable. The case was remanded for Mr. Williams to be resentenced by a different district judge.

At the resentencing, a Motion for a Downward Variance and Memorandum in Support were filed which set forth the objection to the criminal history score provided in the PSR. This objection was based on the 2006 conviction for being a felon in possession out of the Western District of Tennessee. A motion had been filed to vacate the conviction on 11 September 2014, by the former attorney for Mr. Williams which set forth the grounds for vacating the sentence. Attached to the motion were exhibits including the North Carolina conviction, and the letter from the AUSA stating that he was not objecting to these cases being filed.

Prior to resentencing, the initial PSR remained in place and still suggested that the district court may wish to consider a downward variance to account for the substantial impact caused by the prior federal conviction in Tennessee for which Mr. Williams was legally innocent and referencing the Tennessee motion. In addition, counsel for the defendant (an Eastern District of North Carolina Public Defender) in the first sentencing had represented to the court at sentencing that she had handled most of the *Simmons* cases in the Eastern District of North Carolina, and that in her opinion the Tennessee conviction clearly fell within the *Simmons* purview of relief.

As with the initial sentencing, at the resentencing the district court did not recognize that the criminal history was incorrect. The court stated only, and just prior to entering judgment, "... even if I'm wrong, with respect to not viewing defendant in a criminal history Category II..." The district court calculated that if it did recognize the reduction of criminal history as requested and offered by probation, and gave the maximum guideline sentence, it would be a sentence of 228 months—108 months on Counts 1,3 and 4, and the mandatory 120 months consecutive on Count 2. The Court also recognized that the guidelines with the criminal history score unchanged were a total sentence of 257-months, maximum of 137 on Counts 1, 3, and 4, and a consecutive 120 months on Count 2.

The district court asked the government its opinion of an appropriate sentence. The government orally moved for an upward variance and settled on asking for a sentence of 280 months total. The court also asked if the victims wanted to make a statement again. The stepson of one the victims spoke briefly, and court inquired of an New Bern Police Department detective present about the status of the other victim.

In resentencing Mr. Williams, the trial court concentrated on the dangerousness of the defendant, and the need to protect the public. The court also cited the need to promote respect for the law and to discourage these types of actions, the need for treatment of Mr. Williams. Ultimately, the court upwardly departed both upon the government's oral motion, and apparently on motion of the court (where it exceeded the government's recommendation), and entered a

sentence of 308 months—28 months beyond that requested by the government, 51 months beyond the top end of the guideline range, and 80 months over the top end of the guideline range if the court were to acknowledge Mr. Williams correct criminal history as modified by the improper Tennessee conviction. The district court entered a written amended judgment to this effect. Mr. Williams timely appealed.

The Fourth Circuit on 19 December 2017, held that the district court did not abuse its discretion in declining to depart or vary downward. The Court further held that the Court had considered the relevant and appropriate factors in imposing the 308-month sentence.

REASON FOR GRANTING THE WRIT

Mr. Williams' sentence continues to be unreasonable where the underling basis of his criminal history is legally false and has not been accounted for by the sentencing court, and the trial court in Mr. Williams' most recent sentencing failed to consider his post-sentencing rehabilitation.

The passion of the district court in the initial sentencing in this matter, asserting the 480-month sentence on Mr. Williams, continued at resentencing to inappropriately anchor the baseline of reasonableness where Mr. Williams was denied consideration of having an incorrect criminal history category, and the court upwardly departed even beyond that requested by the government. While without a plea agreement, Mr. Williams at all times during his prosecution acknowledged his guilt, assisted in his own prosecution—particularly of the Dollar General offense—and accepted responsibility for his actions. More so, after his original sentence was

imposed, he has made continued and successful efforts at post-sentencing rehabilitation.

When considering the substantive reasonableness of a district court's sentence, this Court considers that the district court's imposition of a judgment under the abuse of discretion standard. *Gall v. United States*, 552 U.S. 38-51 (2007). Review for substantive reasonableness incorporates the totality of the circumstances. *See id.*; *United States v. Evans*, 526 F.3d 155, 161-62 (4th Cir. 2008); *United States v. Hernandez-Villanueva*, 473 F.3d 118, 123 (4th Cir. 2007). It is apparent and unfortunate that the anchor of reasonableness in this case was wrongfully set at 480 months in the initial sentencing. And while the Fourth Circuit found the same substantively unreasonable, it is respectfully asserted that this anchor has continued to distort the application of a "reasonable, and not greater than necessary" sentence in this case. 18 U.S.C. § 3553(a). Respectfully, the resentencing district court should have, when calculating the proper guideline range, granted a downward variance based on Mr. Williams' inflated criminal history. To the contrary, the court failed to recognize that the conviction in Tennessee was improper despite the notice by probation and urging of defense counsel.

It cannot be disputed that Mr. Williams was not a felon under federal law when prosecuted in Tennessee and sentenced to 66 months in federal custody at the age of 20 for allegedly being a felon in possession of a firearm. The "felon" element of this conviction was met by a North Carolina conspiracy to commit breaking and

entering conviction which defendant served a custodial sentence of 4 to 5 months—and was at no point exposed to a sentence of greater than 12 months. As this Honorable Court may be aware, many cases from North Carolina have been vacated because of the fact that this Court ruled in *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011), that for a case to be considered a felony under federal law, it had to be a conviction for a crime in North Carolina for which he could be imprisoned for more than a year. At the time, under North Carolina's structured sentencing scheme, many crimes alleged as state felonies did not expose defendants to imprisonment for more than a year. In the motion to vacate filed in Tennessee, Mr. Williams' addressed the North Carolina conviction which could not have resulted in a sentence that exceeded one year, and thus he was not a felon. Where the conviction had not yet been vacated prior to resentencing (though pending for years), 18 U.S.C. § 3553(a) and the sentencing consideration prescribed therein was the appropriate, expedient, and timely vehicle for which to grant Mr. Williams a considered judgment and reasonable relief from his inflated criminal history. Otherwise, Mr. Williams is substantially and unjustly prejudiced by the often difficult and slow process by which ancillary proceeding such as the Tennessee motion to vacate might be heard. And now, assuming such a hearing is held, it will result in no foreseeable benefit or justice to Mr. Williams.

As was pointed out in Mr. Williams' sentencing memorandum, he had already served approximately five years for a conviction that would no longer be considered a felony under the federal law. And, had his criminal history reflected

this, his guideline range for the robberies in this case would have been 87-108 months instead of the 110-137 months applied by the resentencing court. Each of these would the additional 120-month consecutive sentence added. In turn, the guidelines would have resulted in a sentence of 207- 228 months if the adjusted calculations were used and the Tennessee conviction removed from his criminal history calculation.

At the resentencing, the government proposed a sentence of 280 months. Yet, even denying any relief from the Tennessee judgment's effect on Mr. Williams' criminal history, the resentencing court issued a 308 month sentence. This sentence was more than 100 months over the lowest guideline minimum if the Tennessee conviction was not scored, and 51 months over the highest guideline maximum with the Tennessee conviction being scored. This translates to the resentencing court's sentence exceeding the guidelines by more than 8 years above the lower sentence, a nearly a 50% increase in the lower guideline calculation when excluding the Tennessee conviction. Respectfully, it was not reasonable to ignore the fact that the conviction in Tennessee was improper. The Fourth Circuit has very clearly stated: "[s]urely well established federalism principles do not permit a federal court to reject North Carolina's judgment as to the seriousness of a North Carolina crime, prosecuted in a North Carolina court and adjudicated by a North Carolina judge, merely because the federal court might 'expect' a more serious punishment." *United States v. Simmons*, 649 F.3d 237, 249, (4th Cir. 2011). It was not reasonable

for the district court judge to ignore the improper conviction in Tennessee in computing the correct guidelines.

The trial court additionally failed to considered Mr. Williams' post-sentencing rehabilitation as proffered at his resentencing. "When a Defendant's sentence has been set aside on appeal, a district court at resentencing may consider defendant's post sentencing rehabilitation and that such evidence may, in appropriate cases, support a downward variance from the now-advisory Federal Sentencing Guidelines range." *Pepper v. United States*, 131 S.Ct. 1229, 1236, 562 U.S. 472, 481 (2011).

Proffered at Mr. Williams' resentencing was that Mr. Williams incurred only one infraction, was taking vocational courses and being admitted to college during the nearly five years between his arrest and the third sentencing. While without a plea agreement, Mr. Williams at all times during this prosecution acknowledged his guilt, assisted in his own prosecution—particularly by admitting to the Dollar General offense, a crime which remained unsolved for two-years—and accepted responsibility for his actions.

In addition to failing to apply any variance based on the Tennessee conviction or a departure based on Mr. Williams post-sentencing rehabilitation, the court and government pursued an upward departure in this case. For the reasons outlined above, the resentencing court was unreasonable in departing upward by such a large amount of time. This was especially true when the guidelines and the 924(c) statutory minimum adequately address the type of conduct that was involved in this crime, and appropriately mete out a mandatory consecutive sentence.

It appears that the resentencing court was influenced by the prior and inflated sentence imposed in this matter and found substantively unreasonable by the Fourth Circuit in Williams' first appeal. The resentencing court stated that its sentence was less than the previous sentences, "[o]bviously, it's much less than 480..." The 480 months clearly became the measure for the resentencing court as to not only what was unreasonable, but arbitrarily and inappropriately drew the court up to something that it believed was reasonable (even beyond the recommendation of the government). Moreover, it is respectfully submitted that both sentencing courts were influenced by the rare allocution of the two victims in the earlier sentencing, and the updates provided at the resentencing. While it is proper and appropriate for the victims of a crime to express their feelings and comments before judgment upon a defendant is imposed, the same can inflame emotion of the court and lead to an unreasonable sentence. Here, the resentencing court stated that she had read the prior statements made by the victims of the robbery, and although they did not appear at the rehearing, the stepson of one of the victims spoke, and a NBPD detective who was acquainted with another of the victims addressed the court. The government asked for a 280-month sentence, an upward variance from the inflated guidelines based on the inaccurate criminal history level, and the resentencing court went even further to 308 months.

There was no attempt by Mr. Williams through this brief or otherwise to minimize the crime he committed on 24 July 2012, in which two men were significantly injured. His remorse is clear from the record. It was a violent, awful

crime. And, the guidelines did their work in accounting for this and provided an increase to the offense level by a total of 10 levels, from a base offense level of 20 to an adjusted offense level 31 after grouping. U.S.S.G. §§2B3.1(b)(3)(C) (6-levels for a victim sustaining a life-threatening injury) and (b)(4)(4-levels for a victim being abducted to facilitate the crime). Additionally, a consecutive 924(c) count added 10 years to any underlying sentence. The guidelines in this case, and in particular U.S.S.G. §§ 2B3.1(b)(3) and (4) had taken into account Mr. Williams conduct in the robbery. “The combined adjustments for weapon involvement and injury are limited to a maximum of 11 levels.” U.S.S.G. § 2B3.1, Application Note 4.

At sentencing, 18 U.S.C. § 3553(a) requires consideration beyond the gravity of the crime when the court sends someone to prison. As this Honorable Court has said, and surely with the expectation that its words would be given the breadth and strength of their full meaning by lower courts, “[i]t has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and punishment to ensue.” *Gall v. United States*, *supra*, 552 U.S. 38, 52 (2007)(citation and internal citation omitted).

Tyrone Williams continued to show remorse for his actions at his resentencing. This resentencing court recognized this remorse, and Mr. Williams continued to express his remorse and sorrow over the incident and his conduct. This Court has held that the farther a court diverges from the sentencing guidelines, the

more compelling must be its justification. *See United States v. Pauley*, 511 F.3d 68,475 (4th Cir. 2007). While the court gave many reasons for varying upward, none of them seemed to justify the sentence he received—particularly when failing to account for the inflated criminal history and clear *Simmons* relief owed to Mr. Williams. While the resentencing court ticked through most of the items that 18 U.S.C. § 3553(a) requires, the outcome of 308-months remains unreasonable. The resentencing court failed to give sufficient weight to the items of reasonable mitigation for Mr. Williams—particularly the horrible childhood and upbringing he endured through no fault of his own, the clear mental health issues borne of that upbringing, his acceptance of responsibility and confession, and his willingness to accept the same through a guilty plea. Yet, despite even the measured judgment of the prosecutor that had visited the facts and victims of this case (yet again) and who recommended after great thought a 280-month sentence, the resentencing court extended an upward departure from the already inflated guidelines to 308 months. This was substantively unreasonable and resulted in both a grave injustice to the defendant and a potential liability to the federal court system where such an outcome can only encourage a reasonable, even remorseful, person to risk trial where a guilty plea appears to reap no better result.

CONCLUSION

For the foregoing reasons, it is respectfully asserted this Honorable Court should grant the Petition for Writ of Certiorari.

Respectfully submitted,

GREENE & WILSON, P.A.

A handwritten signature in black ink, appearing to read "Richard E. Rowe". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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Appendix A

United States v. Tyrone Maurice Williams, No. 17-4333

Opinion

Of The United States Court of Appeal for the Fourth Circuit

Decided December 19, 2017

UNPUBLISHED

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

No. 17-4333

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TYRONE MAURICE WILLIAMS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Greenville. Louise W. Flanagan, District Judge. (4:14-cr-00043-FL-1)

Submitted: November 30, 2017

Decided: December 19, 2017

Before TRAXLER, DUNCAN, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Richard E. Rowe, GREENE & WILSON, P.A., New Bern, North Carolina, for Appellant.
John Stuart Bruce, United States Attorney, Jennifer P. May-Parker, First Assistant United States Attorney, Barbara D. Kocher, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tyrone Maurice Williams pled guilty to Hobbs Act robbery, in violation of 18 U.S.C. § 1951 (2012) (count 1), using and carrying a firearm during and in relation to and possessing the firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A) (2012) (count 2), possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1), 924 (count 3), and robbery of a credit union, in violation of 18 U.S.C. § 2113(a) (2012) (count 4). The district court sentenced¹ Williams to a total of 308 months' imprisonment, a sentence resulting from the court granting an upward variance under 18 U.S.C. § 3553(a) (2012) from his advisory Sentencing Guidelines range of 110 to 137 months' imprisonment for counts 1 and 4.² Williams argues on appeal that his sentence is substantively unreasonable. We affirm.

This court reviews criminal sentences for reasonableness using an abuse of discretion standard. *United States v. McManus*, 734 F.3d 315, 317 (4th Cir. 2013) (citing *Gall v. United States*, 552 U.S. 38, 51 (2007)). “When reviewing the substantive reasonableness of a sentence, we examine the totality of the circumstances to see whether the sentencing court abused its discretion in concluding that the sentence it chose

¹ We previously vacated the district court's imposition of a 480-month sentence and remanded for resentencing. *United States v. Williams*, 664 F. App'x 316, 319-22 (4th Cir. 2016) (No. 15-4121).

² The district court sentenced Williams to 2 concurrent terms of 188 months' imprisonment on counts 1 and 4, a concurrent, within-Guidelines term of 120 months' imprisonment on count 3, and a consecutive, within-Guidelines term of 120 months' imprisonment on count 2.

satisfied the standards set forth in [18 U.S.C.] § 3553(a).” *United States v. Gomez-Jimenez*, 750 F.3d 370, 383 (4th Cir. 2014) (internal quotation marks and alteration omitted). Where the sentencing court has imposed a sentence that varies upward from the Guidelines, we must determine “whether the sentencing court acted reasonably both with respect to its decision to impose such a sentence and with respect to the extent of the divergence from the sentencing range.” *United States v. Washington*, 743 F.3d 938, 944 (4th Cir. 2014) (internal quotation marks omitted). We afford due deference to the district court’s determination that the § 3553(a) factors justify the extent of a variance, and the fact that this court might find a different sentence appropriate is insufficient to justify reversal of the district court. *Gall*, 552 U.S. at 51; *United States v. McCoy*, 804 F.3d 349, 351 (4th Cir. 2015) (in reviewing above-Guidelines sentence, this court “defer[s] to the trial court and can reverse a sentence only if it is unreasonable, even if the sentence would not have been [our] choice” (internal quotation marks omitted)).

Williams contends that his sentence is substantively unreasonable because the calculation of his Guidelines range was based on an “inflated” criminal history category resulting from his *Simmons*³-infirm prior Tennessee conviction for which the district court did not grant him a downward variance. After review of the record, we conclude that Williams’ Tennessee conviction was properly considered in the calculation of his criminal history category, *see* U.S. Sentencing Guidelines Manual §§ 4A1.1(a), (d), 4A1.2(a)(1), and did not render that criminal history category infirm or improperly inflate

³ *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (en banc).

the resulting Guidelines range as Williams contends. In rejecting Williams' request for a downward variance premised on this conviction, the district court did not abuse its discretion. *Accord McCoy*, 804 F.3d at 353 (rejecting defendant's claim of substantive unreasonableness premised on district court's failure to use its discretion to depart downward to alter a correct calculation of defendant's base offense level to reflect the claimed "reality" of defendant's offense conduct).

Williams also suggests that the 308-month sentence is substantively unreasonable because the decision to impose this term resulted from the district court's consideration of the allocutions of the robbery victims given at initial sentencing and the updates regarding their conditions provided at resentencing on remand. He observes that consideration of the feelings and comments of crime victims can "inflare emotion" of a court and lead to an unreasonable sentence. He further claims that the district court's sentencing decision was improperly distorted by the earlier imposition of a 480-month sentence. Williams, however, points to no evidence in the record supporting the conclusion of an "inflamed" emotional response on the part of the district court or an improper focus on such emotion, and we find after review of the record no support for such contentions. We further conclude that—contrary to Williams' appellate suggestion—the Guidelines calculations, not the 480-month term previously imposed and vacated, provided the starting metric for guiding the district court's sentencing decision.

Finally, in imposing sentence, the district court properly relied on the violent nature of Williams' offense conduct, his history and characteristics—including his violent criminal history—and the need for the sentence to reflect the seriousness of his

offense conduct, to promote respect for the law, to afford adequate deterrence, and to protect the public, § 3553(a)(1), (2)(A)-(C). In assigning weight to concerns stemming from Williams' violent behavior and weighing those considerations more heavily than his acceptance of criminal responsibility and concerns stemming from his upbringing and mental health, the district court did not abuse its discretion, and we reject Williams' argument to the contrary. *See United States v. Rivera-Santana*, 668 F.3d 95, 105 (4th Cir. 2012) (stating it was within district court's discretion to accord more weight to a host of aggravating factors in defendant's case and decide that the sentence imposed would serve the § 3553 factors on the whole); *United States v. Diosdado-Star*, 630 F.3d 359, 364 (4th Cir. 2011) (sentencing court has "flexibility" in fashioning a sentence outside of the Guidelines range). Although the 308-month sentence results from a 51-month upward variance from the top end of the Guidelines range for counts 1 and 4, the district court, we conclude, did not abuse its discretion in determining that such a deviation was justified by § 3553(a) factors relevant to Williams' case. *See Diosdado-Star*, 630 F.3d at 366-67 (affirming substantive reasonableness of variance sentence six years greater than the Guidelines range because it was based on district court's examination of relevant § 3553(a) factors); *see also United States v. Angle*, 598 F.3d 352, 359 (7th Cir. 2010) ("All that matters is that the sentence imposed be reasonable in relation to the 'package' of reasons given by the [district] court.").

Accordingly, we affirm the amended criminal 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

Appendix B

United States v. Tyrone Maurice Williams, No. 17-4333

Judgment
Of The United States Court of Appeal for the Fourth Circuit

Files December 19, 2017

FILED: December 19, 2017

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4333
(4:14-cr-00043-FL-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

TYRONE MAURICE WILLIAMS

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

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

/s/ PATRICIA S. CONNOR, CLERK

Appendix C

United States v. Tyrone Maurice Williams, No. 4:14-cr-00043-FL-1

Amended Judgment in a Criminal Case
of the United States District Court for the Eastern District of North
Carolina, Greenville

Filed May 17, 2017

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA

V.

TYRONE MAURICE WILLIAMS

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 4:14-CR-43-1FL

USM Number: 21007-076

Richard E. Rowe

Defendant's Attorney

Date of Original Judgment: 5/11/2017

(Or Date of Last Amended Judgment)

Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- ☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- ☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- ☒ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(c))
- ☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- ☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- ☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
- ☐ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

☒ pleaded guilty to count(s) Counts 1, 2, 3, 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:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §1951	Robbery of a Business Engaged in Interstate Commerce	2/11/2014	1
18 U.S.C. §924(c)(1)(A)	Discharging a Firearm During and in Relation to a Crime of Violence	2/11/2014	2

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

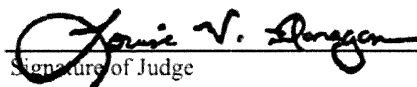
☐ The defendant has been found not guilty on count(s) _____

☐ 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.

5/11/2017

Date of Imposition of Judgment



Signature of Judge

Louise W. Flanagan

U.S. District Judge

Name and Title of Judge

5/17/2017

Date

DEFENDANT: TYRONE MAURICE WILLIAMS
CASE NUMBER: 4:14-CR-43-1FL

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§922(g)(1) & 924	Felon in Possession of a Firearm	2/11/2014	3
18 U.S.C. §2113(a)	Bank Robbery	2/11/2014	4

DEFENDANT: TYRONE MAURICE WILLIAMS
CASE NUMBER: 4:14-CR-43-1FL

IMPRISONMENT

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

188 months on each of Counts 1 and 4, 120 months on Count 3, to be served concurrently, and a term of 120 months on Count 2, to be served consecutively to the terms imposed in Counts 1, 3, and 4, producing a total term of 308 months

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

The court recommends that the defendant receive intensive substance abuse treatment, vocational training, and educational opportunities. The court recommends defendant receive a mental health assessment and mental health treatment, including anger management, while incarcerated. The court recommends that he serve his term in FCI Butner, 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 _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

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

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: TYRONE MAURICE WILLIAMS
CASE NUMBER: 4:14-CR-43-1FL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

***3 years on each of Counts 1, 3, and 4, and a term of 5 years on Count 2, 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 restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must 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; and
- 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, personal history, or characteristics and shall permit the probation officer to make such notifications and confirm the defendant's compliance with such notification requirement.

DEFENDANT: TYRONE MAURICE WILLIAMS
CASE NUMBER: 4:14-CR-43-1FL

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

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

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

DEFENDANT: TYRONE MAURICE WILLIAMS
CASE NUMBER: 4:14-CR-43-1FL

SPECIAL CONDITIONS OF SUPERVISION

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

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

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

The defendant shall participate in a program of mental health treatment, as directed by the probation office.

The defendant shall abstain from the use of alcoholic beverages, shall not associate with individuals consuming alcoholic beverages, shall not frequent business establishments whose primary product to the consumer is alcoholic beverages, and shall not use any medication containing alcohol without the permission of the probation office or a prescription from a licensed physician.

DEFENDANT: TYRONE MAURICE WILLIAMS
CASE NUMBER: 4:14-CR-43-1FL

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 400.00	\$ 0.00	\$ 422,377.16

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- ☐ The defendant shall 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>
Dollar General Corporation	\$422,377.16	\$422,377.16	

TOTALS \$ 422,377.16 \$ 422,377.16

- ☐ 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 ☐ 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: TYRONE MAURICE WILLIAMS
CASE NUMBER: 4:14-CR-43-1FL

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

Payment of restitution shall be due and payable in full immediately. However, if the defendant is unable to pay in full immediately, the special assessment and restitution may be paid through the Inmate Financial Responsibility Program (IFRP). The court orders that the defendant pay a minimum payment of \$25 per quarter through the IFRP, if available. The court, having considered the defendant's financial resources and ability to pay, orders that any balance still owed at the time of release shall be paid in installments of \$50 per month to begin 60 days after the defendant's release from prison. At the time of the defendant's release, the probation officer shall take into consideration the defendant's ability to pay the restitution ordered and shall notify the court of any needed modification of the payment schedule.

DEFENDANT: TYRONE MAURICE WILLIAMS
CASE NUMBER: 4:14-CR-43-1FL

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 \$ 422,777.16 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance with ☐ C. ☐ D. ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
The special assessment in the amount of \$400.00 and restitution in the amount of \$422,377.16 are due in full immediately. See Sheet 5A for additional payment instructions

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) penalties, and (8) costs, including cost of prosecution and court costs.

IN THE
Supreme Court of the United States

TYRONE MAURICE WILLIAMS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Richard E. Rowe
GREENE & WILSON, P.A.
401 Middle Street
P.O. Box 1676
New Bern, NC 28560
(252) 634-9400 Telephone
drowe@greenewilson.com

*Counsel of Record for Petitioner
Tyrone Maurice Williams*

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

- Appendix A – Opinion, *United States v. Tyrone Maurice Williams*, No. 17-4333 of the United States Court of Appeals for the Fourth Circuit
Decided December 19, 2017 App-1
- Appendix A – Judgment, *United States v. Tyrone Maurice Williams*, No. 17-4333 of the United States Court of Appeals for the Fourth Circuit
Filed December 19, 2017..... App-7
- Appendix C – Amended Judgment in a Criminal Case, *United States v. Tyrone Maurice Williams* of the United States District Court for the Eastern District of North Carolina, Greenville, No. 4:14-cr-00043-FL-1
Filed May 17, 2017 App-8

Appendix A

United States v. Tyrone Maurice Williams, No. 17-4333

Opinion
Of The United States Court of Appeal for the Fourth Circuit

Decided December 19, 2017

UNPUBLISHED

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

No. 17-4333

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TYRONE MAURICE WILLIAMS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Greenville. Louise W. Flanagan, District Judge. (4:14-cr-00043-FL-1)

Submitted: November 30, 2017

Decided: December 19, 2017

Before TRAXLER, DUNCAN, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Richard E. Rowe, GREENE & WILSON, P.A., New Bern, North Carolina, for Appellant.
John Stuart Bruce, United States Attorney, Jennifer P. May-Parker, First Assistant United States Attorney, Barbara D. Kocher, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tyrone Maurice Williams pled guilty to Hobbs Act robbery, in violation of 18 U.S.C. § 1951 (2012) (count 1), using and carrying a firearm during and in relation to and possessing the firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A) (2012) (count 2), possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1), 924 (count 3), and robbery of a credit union, in violation of 18 U.S.C. § 2113(a) (2012) (count 4). The district court sentenced¹ Williams to a total of 308 months' imprisonment, a sentence resulting from the court granting an upward variance under 18 U.S.C. § 3553(a) (2012) from his advisory Sentencing Guidelines range of 110 to 137 months' imprisonment for counts 1 and 4.² Williams argues on appeal that his sentence is substantively unreasonable. We affirm.

This court reviews criminal sentences for reasonableness using an abuse of discretion standard. *United States v. McManus*, 734 F.3d 315, 317 (4th Cir. 2013) (citing *Gall v. United States*, 552 U.S. 38, 51 (2007)). “When reviewing the substantive reasonableness of a sentence, we examine the totality of the circumstances to see whether the sentencing court abused its discretion in concluding that the sentence it chose

¹ We previously vacated the district court's imposition of a 480-month sentence and remanded for resentencing. *United States v. Williams*, 664 F. App'x 316, 319-22 (4th Cir. 2016) (No. 15-4121).

² The district court sentenced Williams to 2 concurrent terms of 188 months' imprisonment on counts 1 and 4, a concurrent, within-Guidelines term of 120 months' imprisonment on count 3, and a consecutive, within-Guidelines term of 120 months' imprisonment on count 2.

satisfied the standards set forth in [18 U.S.C.] § 3553(a).” *United States v. Gomez-Jimenez*, 750 F.3d 370, 383 (4th Cir. 2014) (internal quotation marks and alteration omitted). Where the sentencing court has imposed a sentence that varies upward from the Guidelines, we must determine “whether the sentencing court acted reasonably both with respect to its decision to impose such a sentence and with respect to the extent of the divergence from the sentencing range.” *United States v. Washington*, 743 F.3d 938, 944 (4th Cir. 2014) (internal quotation marks omitted). We afford due deference to the district court’s determination that the § 3553(a) factors justify the extent of a variance, and the fact that this court might find a different sentence appropriate is insufficient to justify reversal of the district court. *Gall*, 552 U.S. at 51; *United States v. McCoy*, 804 F.3d 349, 351 (4th Cir. 2015) (in reviewing above-Guidelines sentence, this court “defer[s] to the trial court and can reverse a sentence only if it is unreasonable, even if the sentence would not have been [our] choice” (internal quotation marks omitted)).

Williams contends that his sentence is substantively unreasonable because the calculation of his Guidelines range was based on an “inflated” criminal history category resulting from his *Simmons*³-infirm prior Tennessee conviction for which the district court did not grant him a downward variance. After review of the record, we conclude that Williams’ Tennessee conviction was properly considered in the calculation of his criminal history category, *see* U.S. Sentencing Guidelines Manual §§ 4A1.1(a), (d), 4A1.2(a)(1), and did not render that criminal history category infirm or improperly inflate

³ *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (en banc).

the resulting Guidelines range as Williams contends. In rejecting Williams' request for a downward variance premised on this conviction, the district court did not abuse its discretion. *Accord McCoy*, 804 F.3d at 353 (rejecting defendant's claim of substantive unreasonableness premised on district court's failure to use its discretion to depart downward to alter a correct calculation of defendant's base offense level to reflect the claimed "reality" of defendant's offense conduct).

Williams also suggests that the 308-month sentence is substantively unreasonable because the decision to impose this term resulted from the district court's consideration of the allocutions of the robbery victims given at initial sentencing and the updates regarding their conditions provided at resentencing on remand. He observes that consideration of the feelings and comments of crime victims can "inflare emotion" of a court and lead to an unreasonable sentence. He further claims that the district court's sentencing decision was improperly distorted by the earlier imposition of a 480-month sentence. Williams, however, points to no evidence in the record supporting the conclusion of an "inflamed" emotional response on the part of the district court or an improper focus on such emotion, and we find after review of the record no support for such contentions. We further conclude that—contrary to Williams' appellate suggestion—the Guidelines calculations, not the 480-month term previously imposed and vacated, provided the starting metric for guiding the district court's sentencing decision.

Finally, in imposing sentence, the district court properly relied on the violent nature of Williams' offense conduct, his history and characteristics—including his violent criminal history—and the need for the sentence to reflect the seriousness of his

offense conduct, to promote respect for the law, to afford adequate deterrence, and to protect the public, § 3553(a)(1), (2)(A)-(C). In assigning weight to concerns stemming from Williams' violent behavior and weighing those considerations more heavily than his acceptance of criminal responsibility and concerns stemming from his upbringing and mental health, the district court did not abuse its discretion, and we reject Williams' argument to the contrary. *See United States v. Rivera-Santana*, 668 F.3d 95, 105 (4th Cir. 2012) (stating it was within district court's discretion to accord more weight to a host of aggravating factors in defendant's case and decide that the sentence imposed would serve the § 3553 factors on the whole); *United States v. Diosdado-Star*, 630 F.3d 359, 364 (4th Cir. 2011) (sentencing court has "flexibility" in fashioning a sentence outside of the Guidelines range). Although the 308-month sentence results from a 51-month upward variance from the top end of the Guidelines range for counts 1 and 4, the district court, we conclude, did not abuse its discretion in determining that such a deviation was justified by § 3553(a) factors relevant to Williams' case. *See Diosdado-Star*, 630 F.3d at 366-67 (affirming substantive reasonableness of variance sentence six years greater than the Guidelines range because it was based on district court's examination of relevant § 3553(a) factors); *see also United States v. Angle*, 598 F.3d 352, 359 (7th Cir. 2010) ("All that matters is that the sentence imposed be reasonable in relation to the 'package' of reasons given by the [district] court.").

Accordingly, we affirm the amended criminal 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

Appendix B

United States v. Tyrone Maurice Williams, No. 17-4333

Judgment
Of The United States Court of Appeal for the Fourth Circuit

Files December 19, 2017

FILED: December 19, 2017

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4333
(4:14-cr-00043-FL-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

TYRONE MAURICE WILLIAMS

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

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

/s/ PATRICIA S. CONNOR, CLERK

Appendix C

United States v. Tyrone Maurice Williams, No. 4:14-cr-00043-FL-1

Amended Judgment in a Criminal Case
of the United States District Court for the Eastern District of North
Carolina, Greenville

Filed May 17, 2017

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA

V.

TYRONE MAURICE WILLIAMS

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 4:14-CR-43-1FL

USM Number: 21007-076

Richard E. Rowe

Defendant's Attorney

Date of Original Judgment: 5/11/2017

(Or Date of Last Amended Judgment)

Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
☒ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
☐ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

☒ pleaded guilty to count(s) Counts 1, 2, 3, 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
18 U.S.C. §1951	Robbery of a Business Engaged in Interstate Commerce	2/11/2014	1
18 U.S.C. §924(c)(1)(A)	Discharging a Firearm During and in Relation to a Crime of	2/11/2014	2
	Violence		

The defendant is sentenced as provided in pages 2 through 9 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.

5/11/2017

Date of Imposition of Judgment



Signature of Judge

Louise W. Flanagan

U.S. District Judge

Name and Title of Judge

5/17/2017

Date

ADDITIONAL COUNTS OF CONVICTION

[illegible]

DEFENDANT: TYRONE MAURICE WILLIAMS
CASE NUMBER: 4:14-CR-43-1FL

IMPRISONMENT

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

188 months on each of Counts 1 and 4, 120 months on Count 3, to be served concurrently, and a term of 120 months on Count 2, to be served consecutively to the terms imposed in Counts 1, 3, and 4, producing a total term of 308 months

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

The court recommends that the defendant receive intensive substance abuse treatment, vocational training, and educational opportunities. The court recommends defendant receive a mental health assessment and mental health treatment, including anger management, while incarcerated. The court recommends that he serve his term in FCI Butner, 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 _____ ☐ a.m. ☐ p.m. on _____
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

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

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: TYRONE MAURICE WILLIAMS

CASE NUMBER: 4:14-CR-43-1FL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

*3 years on each of Counts 1, 3, and 4, and a term of 5 years on Count 2, 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 restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must 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; and
- 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, personal history, or characteristics and shall permit the probation officer to make such notifications and confirm the defendant's compliance with such notification requirement.

DEFENDANT: TYRONE MAURICE WILLIAMS
CASE NUMBER: 4:14-CR-43-1FL

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

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

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

DEFENDANT: TYRONE MAURICE WILLIAMS
CASE NUMBER: 4:14-CR-43-1FL

SPECIAL CONDITIONS OF SUPERVISION

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

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

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

The defendant shall participate in a program of mental health treatment, as directed by the probation office.

The defendant shall abstain from the use of alcoholic beverages, shall not associate with individuals consuming alcoholic beverages, shall not frequent business establishments whose primary product to the consumer is alcoholic beverages, and shall not use any medication containing alcohol without the permission of the probation office or a prescription from a licensed physician.

DEFENDANT: TYRONE MAURICE WILLIAMS

CASE NUMBER: 4:14-CR-43-1FL

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 400.00	\$ 0.00	\$ 422,377.16

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

☐ The defendant shall 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>
Dollar General Corporation	\$422,377.16	\$422,377.16	

TOTALS	\$ <u>422,377.16</u>	\$ <u>422,377.16</u>
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☐ 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 ☐ 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: TYRONE MAURICE WILLIAMS
CASE NUMBER: 4:14-CR-43-1FL

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

Payment of restitution shall be due and payable in full immediately. However, if the defendant is unable to pay in full immediately, the special assessment and restitution may be paid through the Inmate Financial Responsibility Program (IFRP). The court orders that the defendant pay a minimum payment of \$25 per quarter through the IFRP, if available. The court, having considered the defendant's financial resources and ability to pay, orders that any balance still owed at the time of release shall be paid in installments of \$50 per month to begin 60 days after the defendant's release from prison. At the time of the defendant's release, the probation officer shall take into consideration the defendant's ability to pay the restitution ordered and shall notify the court of any needed modification of the payment schedule.

DEFENDANT: TYRONE MAURICE WILLIAMS
CASE NUMBER: 4:14-CR-43-1FL

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 \$ 422,777.16 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
The special assessment in the amount of \$400.00 and restitution in the amount of \$422,377.16 are due in full immediately. See Sheet 5A for additional payment instructions

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) penalties, and (8) costs, including cost of prosecution and court costs.