NOT RECOMMENDED FOR PUBLICATION

No. 24-5896

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	ON APPEAL FROM THE UNITED
v.	)	STATES DISTRICT COURT FOR
	)	THE WESTERN DISTRICT OF
LOUIE HOLLOWAY,	)	TENNESSEE
	)	
Defendant-Appellant.	)	

ORDER

Before: SUTTON, Chief Judge; BATCHELDER and NALBANDIAN, Circuit Judges.

Louie Holloway appeals through counsel his amended criminal judgment on resentencing. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). For the reasons below, we affirm.

In 2008, a jury convicted Holloway of the following crimes after he and three others tried to rob and then shot and killed a pizza delivery man: three counts of being a felon in possession of a firearm under 18 U.S.C. § 922(g), one count of attempted Hobbs Act robbery under 18 U.S.C. § 1951, and one count of discharging a firearm during the commission of a crime of violence under 18 U.S.C. § 924(c). The district court sentenced him to 120 months of imprisonment on each of the § 922(g) convictions and 240 months on the Hobbs Act robbery conviction, all to run concurrently. The court imposed a life sentence on the § 924(c) conviction, to run consecutively to the Hobbs Act robbery sentence. We affirmed his sentence on direct appeal. *United States v. Holloway*, 480 F. App'x 374, 380 (6th Cir. 2012). Holloway's first motion to vacate under 28 U.S.C. § 2255 was denied, but we authorized him to file a second or successive § 2255 motion on one claim: that his conviction for attempted Hobbs Act robbery did not support his § 924(c)

(APPENDIX A)

conviction after *United States v. Davis*, 588 U.S. 445, 448 (2019). *See In re Holloway*, No. 20-5647 (6th Cir. Nov. 24, 2020).

The district court granted Holloway relief under § 2255 and vacated his § 924(c) conviction. *Holloway v. United States*, No 2:20-cv-2419 (W.D. Tenn. Aug. 15, 2023). The district court then held a resentencing hearing and imposed an amended sentence on the four remaining convictions of 600 months: 120 months on each of the three § 922(g) convictions and 240 months on the attempted Hobbs Act robbery conviction, all to run consecutively to each other.

On appeal, Holloway argues that the district court erred by failing to merge his three § 922(g) convictions for sentencing purposes and by failing to adequately explain why it made all the sentences consecutive. Alternatively, he argues that the district court erred by not making his sentence on the first § 922(g) conviction concurrent with his sentence on the attempted Hobbs Act robbery conviction.

Holloway first argues that the district court should have merged his three § 922(g) convictions because they were multiplicitous. "We review de novo claims of multiplicity—'charging a single offense in more than one count in an indictment.'" *United States v. Vichitvongsa*, 819 F.3d 260, 273 (6th Cir. 2016) (quoting *United States v. Swafford*, 512 F.3d 833, 844 (6th Cir. 2008)). The government argues that Holloway waived this argument by failing to raise it during his criminal case or initial appeal. We need not address waiver because, as the government also argues, the three convictions were not multiplicitous.

"[O]nly one offense is charged under the terms of § [922(g)] regardless of the number of firearms involved, absent a showing that the firearms were stored or acquired at different times or places." *United States v. Adams*, 214 F.3d 724, 728 (6th Cir. 2000) (quoting *United States v. Rosenbarger*, 536 F.2d 715, 721 (6th Cir. 1976)). Holloway argues that the government never proved that he stored or acquired the three guns at different times or places. But the government alleged and proved that—although the shotgun, pistol, and rifle were all found on October 16, 2002, during a search of Holloway's home—he possessed and used the guns at different times and places. He used the shotgun on September 8 to shoot the victim during the attempted robbery. *See*

Holloway, 480 F. App'x at 375. And he used the pistol on October 7 to shoot a man at a dice game. Meanwhile, he was charged with possessing the rifle on the day of the search, October 16.

Holloway points to *Rosenbarger* to argue that the government did not make the required showing. Yet "[t]he issue in *Rosenbarger* was 'whether the government may treat each weapon simultaneously possessed by a felon as a separate offense,'" while Holloway was convicted of three separate offenses "occurring on" three separate dates, not simultaneous possession. *United States v. Cole*, No. 98-5925, 1999 WL 777312, at *4 (6th Cir. Sept. 23, 1999) (per curiam) (quoting *Rosenbarger*, 536 F.2d at 720). Thus, the district court did not err by sentencing Holloway on each § 922(g) conviction.

Holloway next argues that the district court did not adequately explain its decision to run each sentence consecutively given that the court stated that it did not believe that it could consider his merger arguments about his § 922(g) convictions. "Congress has given district courts discretion to decide whether to impose consecutive or concurrent sentences." *United States v. Morris*, 71 F.4th 475, 483 (6th Cir. 2023) (citing 18 U.S.C. § 3584(a)). "When doing so, they must consider the [18 U.S.C.] § 3553(a) factors." *United States v. Brown*, 131 F.4th 337, 349 (6th Cir. 2025) (citing 18 U.S.C. § 3584(b)). And "'a district court must 'make[] generally clear [its] rationale' for imposing a consecutive sentence." *Id.* (alterations in original) (quoting *Morris*, 71 F.4th at 483).

The district court laid out why merger was inappropriate and why the sentences, in the court's assessment, should be consecutive. And the court detailed its reasoning with specific reference to the sentencing factors in § 3553(a), highlighting, among other things, the "horrific nature of this offense," and Holloway's "very serious criminal history." *See* 18 U.S.C. § 3553(a)(1), (2)(A). The court's sentence, then, was not an abuse of discretion. *See United States v. Gardner*, 32 F.4th 504, 529 (6th Cir. 2022).

Finally, Holloway argues that the district court should have imposed concurrent sentences for his attempted Hobbs Act robbery conviction and his § 922(g) conviction, the latter of which was based on the shotgun that he used during the former. He maintains that, in calculating his

advisory sentencing range under the United States Sentencing Guidelines, the district court "already adequately took the use of the firearm during the attempted Hobbs Act robbery into account" by applying a cross reference to the homicide guideline. Yet, as the government argues, the cross reference applied because a victim of the attempted robbery was killed, not because Holloway used a gun. Thus, "the calculations are tied to different aspects of [Holloway's] conduct." *United States v. Marsh*, 95 F.4th 464, 472 (6th Cir. 2024).

Therefore, we **AFFIRM** the district court's amended judgment.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

in an incident -- this is a little less than a month later where he shoots the man, again with a gun.

So, this is an individual who gets out of prison, within 2 months he has acquired guns, he has murdered a man during a robbery, but that doesn't stop.

He keeps on and he shoots a man during another, I submit, a robbery. It is undisputed, of course, that he shot the man, a Mr. Powell.

Your Honor, we submit that therefore a life sentence is appropriate to protect society in this case. This defendant is a predator I would submit to Your Honor again.

He has had his chance at rehabilitation. He has come out worse. Your Honor, a life sentence is the guideline sentence in this case. It is the appropriate sentence. It is the just sentence and it's the sentence that I will submit the Court should impose for the conduct of this defendant.

THE COURT: Probation?

PROBATION: I have nothing to add, Your Honor.

THE COURT: Mr. Alden?

MR. ALDEN: I have nothing further, Your Honor. I think the Court has before it all of the relevant factors.

I just would point out as the Court has said in a number of other cases, there was some uncharged conduct that I think that Mr. Arvin referred to that I'm not sure the Court has heard any testimony on. I don't know the Court -- whether the Court is going to take it into account. But the shot -- the shooting of Mr. Powell, I know there was a statement that came into evidence regarding that because that is involving one of the guns, so I guess -- as I recall, I guess there was some evidence regarding that. But I am asking the Court not to -- you know - -

THE COURT: Well, so we are clear on what I'm prepared to sentence. I tried this case. I am going to consider all of the facts in the Presentence Report, except as to the defendant's argument that he wasn't guilty, are undisputed.

I've said I'm not going to consider - I'll consider the fact that Mr. Haggerman made some remarks on this procedural matter. But as to whether - as to whether it is more or less likely what Mr. Holloway did, or what Mr. Haggerman, or General Haggerman thinks he did, I won't be considering for that purpose.

As far as Mr. Powell's shooting, my recollection is that one of the guns in this case was used to shoot Mr. Powell, but that may not be right. Do you remember?

MR. ALDEN: No, I believe you are correct, Your Honor. There was testimony regarding that and as Mr. Arvin stood up, I recalled that. I think he was going to point that out.

THE COURT: My memory of the case is that the situation relevant to Mr. Stambaugh is Count 4.

MR. ALDEN: Yes, sir.

THE COURT: And, the gun that is involved was in Count 1 of the indictment and in Count 5 of the indictment.

MR. ALDEN: That's correct, Your Honor.

THE COURT: And, that while either Count 2 - Count 2 or 3 was one that used to shoot Mr. Powell --

MR. ALDEN: Yes, sir.

THE COURT: That may not be right. Is that your recollection?

MR. ARVIN: That's correct, Your Honor. The defendant made a written confession stating he used, I think, it was a silver handgun to shoot Mr. Powell. He

admitted shooting Mr. Powell. Basically, he said it was some type of self-defense incident. But he did admit to having a gun and shooting Mr. Powell on October 7, 2002.

THE COURT: So. I would consider that as part of the relevant conduct because it is related conduct. I think I need too. As far as that conduct, it's not going to make a material difference in my view of the case.

MR. ALDEN: Yes, sir.

THE COURT: What else did you want to tell me?

MR. ALDEN: That's all, Your Honor.

THE COURT: All right. Why don't the parties come on down. --

MR. ARVIN: Your Honor, we do have family members that want to address the Court.

THE COURT: Oh, I didn't mean to leave anybody out.

MR. ARVIN: I didn't know when you wanted to hear them.

THE COURT: I don't know if Counsel has a witness either.

MR. ALDEN: I don't have any witnesses.

THE COURT: Do you have any proof you want to put on or are you going to have a statement?

MR. ARVIN: I'll just have them come up and address the Court if that is ---

THE COURT: That will be fine.

(Whereupon, family members of Mr. Holloway addressed the Court)

MR. ARVIN: Stand right here.
