No. _____

IN THE

Supreme Court of the United States

WARREN HAROLD BROWN,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

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

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether *Callanan v. United States*, 364 U.S. 587 (1961), should be overruled or limited as violative of the *Double Jeopardy Clause* where petitioner was twice convicted and double sentenced to 40 years' consecutive imprisonment for a single violation of the indivisible Hobbs Act, 18 U.S.C. § 1951(a), by attempting to rob a convenience store in a momentary, coterminous conspiracy.

RELATED PROCEEDINGS

Supreme Court of the United States

Oliver v. United States, No. 25-5311 (October 6, 2025) (denying codefendant's petition for writ of certiorari on other grounds)

United States Court of Appeals (4th Cir.)

United States v. Brown, No. 23-4064 (June 26, 2025) (instant appeal) (rehearing denied September 30, 2025)

United States v. Brown, No. 19-4918 (July 27, 2022) (vacating conviction on second 18 U.S.C. § 924(c))

United States District Court (E.D.VA)

United States v. Brown, No. 3:11-cr-063-1 (January 23, 2023) (instant judgment)

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OPINIONS BELOW

Petitioner Warren Harold Brown was convicted of two counts of the indivisible Hobbs Act, 18 U.S.C. § 1951(a)--one count of attempted robbery and one count of conspiracy, and two counts of 18 U.S.C. § 924(c), one predicated on each Hobbs Act count. Initially, the imprisonment sentences on the Hobbs Act counts ran concurrently for 175 months, but, when the judgments on the 18 U.S.C. § 924(c) counts were set aside, the district court increased the sentences on the Hobbs Act counts to 20 years each, consecutively, for a total of 40 years' imprisonment. The United States Court of Appeals for the Fourth Circuit, without oral argument, summarily affirmed the convictions and resentences in an unpublished *per curiam* opinion, *United States v. Warren Harold Brown* (4th Cir., June 26, 2025) (App. A). Codefendant Winston Sylvester Oliver, II's, convictions and sentence were also affirmed but on different grounds, *United States v. Oliver*, 133 F.4th 329 (4th Cir. 2025), *cert. denied* (No. 25-5311, October 6, 2025).

JURISDICTION

The district court had jurisdiction over this criminal case under 18 U.S.C. § 3231. The Fourth Circuit Court of Appeals had jurisdiction over the appeal pursuant to 28 U.S.C. §§ 1291 and 1294 and 18 U.S.C. § 3742. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The judgment of the United States Court of Appeals for the Fourth Circuit was entered on June 26, 2025, and a motion for rehearing was denied on September 30, 2025, within ninety days before the filing of this petition (App. C).

CONSTITUTIONAL AND STATUTORY PROVISIONS

18 U.S.C. § 1951(a):

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

The Fifth Amendment to the United States Constitution provides in relevant part that no person shall "be subject for the same offense to be twice put in jeopardy of life . . ." U.S. CONST., AMENDMENT V.

STATEMENT OF THE CASE

The Conspiracy and Attempted Hobbs Act Robbery

The essential facts are not in dispute. As summarized by then Senior U.S. District Judge James R. Spencer, for more than a year prior to the attempted robbery, codefendant Winston Sylvester Oliver, II, planned to rob the Mr. Fuel Truck Plaza ("Mr. Fuel") in Ruther Glen, Virginia. Mr. Oliver learned from his wife, Danielle Oliver, who had worked at Mr. Fuel, that Mr. Fuel employees kept large amounts of money in the cash register drawers. Mr. Oliver surveilled Mr. Fuel and planned several getaway routes.

On May 8, 2010, petitioner Warren Harold Brown visited Mr. Oliver's home in Chesterfield County, Virginia. While there, Mr. Brown told Mr. Oliver that he was having money problems. Mr. Brown had been installing pipes out of town and sending money back to his children's mother to pay her bills, but she had failed to pay them. The landlord told the mother she had to pay the back rent quickly, or she

and the children would be put out on the street. On May 6, 2010, Mr. Brown's employer completed the pipe installation job, and Mr. Brown became unemployed. When he came home from the job and found that his children would soon be evicted, Mr. Brown was desperate and panicked.

During the May 8, 2010, conversation, Mr. Oliver told Mr. Brown to get into Oliver's blue Ford Explorer. Mr. Brown complied. At approximately 9:30 p.m., Messrs. Brown and Oliver parked at the Howard Johnson's motel down the hill from Mr. Fuel. Mr. Oliver told Mr. Brown to rob Mr. Fuel. Mr. Oliver pulled a loaded revolver from beneath the front seat of the vehicle and gave it to Mr. Brown. Mr. Oliver told Mr. Brown there were no video cameras in the establishment so he would not get caught. Mr. Brown repeatedly refused and protested but eventually decided to go through with the robbery. Even the government admits the robbery was not on Mr. Brown's radar, that Mr. Oliver dominated Mr. Brown, and that Mr. Brown was Mr. Oliver's puppet.[1]

Nevertheless, Mr. Brown entered Mr. Fuel and picked up a pack of crackers. He proceeded to the cash register and gave the pack of crackers to Sharon Jo Conrad ("Conrad"). After Conrad scanned the item, Mr. Brown pulled out the handgun and told Conrad to give him the money from the cash register. Conrad tried to open the register but could not. Mr. Brown became agitated and fired the handgun near her feet or arm.

1 Mr. Brown may have suffered brain damage as a child and was neglected and ignored by his father, leading to some mental health issues and drug abuse.

Theodore Edmond ("Edmond"), a customer in Mr. Fuel, saw what was happening and believed Mr. Brown was going to kill Conrad and the other store clerk, Wanda Miss. Edmond grabbed two beer bottles, approached Mr. Brown from behind, and hit him in the head with the bottles. In the ensuing struggle between Mr. Brown and Edmond, Mr. Brown shot Edmond four times as he fled the crime scene. Vietnam War veteran Edmond did not realize he had been shot until he attempted to pursue Mr. Brown. The video of the robbery shows retired Marine Edmond struggling to walk and wiping his forehead where he had been grazed by a bullet during the struggle. Edmond was shot once or twice in the shoulder and once in the left groin and right buttock. None of the bullets was removed because Edmond's surgeon, a combat veteran, determined surgery would do more damage than the bullets. Edmond returned to work two weeks later and declines to take pain medication though he continues to have occasional shoulder discomfort and headaches. The clerks, who had not been physically harmed, suffered emotional and mental distress. After the robbery attempt, Mr. Brown ran back to the car where Mr. Oliver was waiting to drive them back to Richmond, Virginia.

The Sentencings

On September 14, 2011, Messrs. Oliver and Brown were each convicted by a jury of conspiracy to commit robbery affecting commerce (Count 1) and attempt to commit robbery affecting commerce (Count 3), in violation of 18 U.S.C. § 1951(a). Each count in turn then supported convictions of using and carrying a firearm during and in relation to a crime of violence, 18 U.S.C. § 924(c) (Counts 2 and 4 of the

superseding indictment). Based on the presentence investigation report's finding of an offense level 28 and Mr. Brown's many prior convictions (mostly driving and nonviolent drug possession offenses) resulting in a criminal history category VI, on February 14, 2013, then United States District Judge Spencer followed the sentencing guidelines recommendation and signed an amended judgment sentencing Mr. Brown to 175 months' imprisonment on Count 1 "to be served concurrent to Count 3," and 120 months' imprisonment on Count 2 and 317 months' imprisonment on Count 4, both to be served consecutively to the concurrent 175-month sentences on Counts 1 and 3, for a total imprisonment of 612 months. The initial January 19, 2012, judgment was amended to ensure Mr. Brown received credit for time served. On March 8, 2013, the Fourth Circuit Court of Appeals affirmed the judgment of the district court (Case No. 12-4052).

On July 30, 2019, in light of *Johnson v. United States*, 576 U.S. 591 (2015), *United States v. Davis*, 588 U.S. 445 (2019), and *United States v. Simms*, 914 F.3d 229 (4th Cir. 2019), the district court (Senior United States District Judge Henry E. Hudson) vacated Mr. Brown's conviction on 18 U.S.C. § 924(c) in Count 2 (based on conspiracy) but not on the same charge in Count 4 (based on attempt). On November 26, 2019, the district court resentenced Mr. Brown to 175 months' imprisonment on the Hobbs Act robbery Counts 1 and 3, but ran the sentences consecutively to each other, and 250 months' imprisonment on Court 4 consecutive to the then and now consecutive sentences on Counts 1 and 3. Instead of reducing Mr. Brown's overall imprisonment sentence by the ten years that had been imposed

on the vacated 18 U.S.C. § 924(c) conviction in Count 2, the district court imposed a 600-month imprisonment sentence on Mr. Brown, thus reducing his initial overall sentence by a mere 12 months.

Since his initial sentencing in January 2012 to the filing of the instant appeal, Mr. Brown had not committed a single infraction within the prison system—not one in more than 12 years, and, while the district court said it gave Mr. Brown credit for his "progress," it certainly did not appear in a 12-month reduction when the vacation of the Count 2 conviction called for more than a 25-year reduction (because only one 18 U.S.C. § 924(c) conviction then survived) in Mr. Brown's sentence. The district court also acknowledged Mr. Brown's contrition, and, while the district court acknowledged that the sentencing guidelines on Counts 1 and 3 had been properly computed at 140-175 months' imprisonment, it certainly did not follow their admonition that the sentences on the Hobbs Act conspiracy and attempt convictions be run concurrently, but rather ran them consecutively without any justification for a single offense level increase, let alone a more than doubling of Mr. Brown's sentence on those convictions. The district court adopted Chief Judge Spencer's judgment of a 600-month sentence, but not his reasoning or application of the sentencing guidelines, and seemingly ignored Mr. Brown's sincere repentance, apology, and pleas for forgiveness from God and his victims.[2]

2 Mr. Brown's apology to the Court in November 2019: "First and foremost, I'd like to apologize to the victims. I was young and immature in my thoughts for my actions. Secondly, I would like to apologize to my family. I was in a bad place at that time, and I hope they can find it -- the victims can find it in their heart to forgive me. There's not a day that goes by that I don't ask God to forgive my sins, and I'm asking them to do the same. And I want to apologize to the Court for bringing this nonsense to the courtroom. It's just it was a messed-up decision. I was young and immature, and I

On July 27, 2022, in light of this Court's decision in *United States v. Taylor*, 596 U.S. 845 (2022), the Fourth Circuit Court of Appeals vacated Mr. Brown's conviction on 18 U.S.C. § 924(c) in Count 4 (Case No. 19-4918). On January 19, 2023, the district court again resentenced Mr. Brown on the Hobbs Act conspiracy (Count 1) and the attempt (Count 3). Instead of reducing Mr. Brown's imprisonment sentence by the 250 months (20 years and 10 months) imposed by the district court in 2019 on the vacated Count 4, the district court increased the consecutive sentences for Counts 1 and 3 from 175 months' imprisonment each (now recomputed range 188-235 months due to the dismissal of the § 924(c) counts)[3] to

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do apologize to everybody that's affected by the situation. I not only did affect -- I affected myself, my kids, my family. I want to apologize. I was dumb. Young and dumb. I was just -- I was not thinking of what I could do. Like all y'all out here, y'all got a job. Y'all got a job. I could do the same thing. But at the time, I was just thinking about my kids. And I'm not using that as no excuse because I'm the one -- I'm to blame. I chose to do that. I chose to go in the store and did what I did to try to make it better for my family. I chose that. I'm not blaming nobody. I'm blaming myself. But I'm just hoping that the victims could find it in their heart to forgive me and the Courts can forgive me. Thank you."

Mr. Brown's contrition to the Court in January 2023: "First and foremost, I am 43 years old. I made a mistake when I was 31. To that point, I'm truly, truly sorry. The prosecutor is still trying to state that I'm the same person, which I'm not. I am totally different. And if it please the Court, I would like to read this. . . Dear Honorable Judge Hudson. Good morning. First and foremost, I want to thank you for reading the letter I sent you. And I want to thank you for letting me speak this morning. Secondly, I want to thank -- excuse me because I'm blind. I'm going to be honest with you. I'm blind. . . Secondly, I want to thank you for giving me the chance to speak and also to read this letter. There's nothing I can say this morning to justify my actions on that May 8, 2010, night. I was selfish to everyone connected to this case. To the victims, and family, I was never trying to hurt anyone, but I did. For that, I would like to apologize. To the victims, I sincerely apologize for the harm I caused. And I understand how my actions has changed all our lives through the years. With constant reflection, I realize not only did I destroy the victims' lives, but also my own -- own life, as well as my family's. Secondly, I would like to apologize to my family for the embarrassment I caused. My mother and sister raised me to be better than this. I understand that I can't change the past, but I would change -- but I -- excuse me, but I am a changed man. I have changed for the better. Excuse me. I have changed for the better. I'm asking the Court to give me a chance to prove that I am a changed man. Thank you for the Court's time to address the Court."

3 Mr. Brown's sentencing guidelines recomputation considered both that he discharged a firearm and that the victims sustained permanent and life-threatening bodily injuries, USSG §2B3.1(b)(2) and (3).

the statutory maximum of 240 months each and again ran them consecutively for a total imprisonment sentence of 40 years, though even the government acknowledged that, in this scenario, the sentencing guidelines contemplated running the sentences concurrently. The district court acknowledged Mr. Brown's "participation only began on the morning of the robbery" and that he was then working in the prison UNICOR program and had successfully completed almost 30 educational courses there (and obtained his GED for the second time). Yet, disregarding *Pepper v. United States*, 562 U.S. 476, 492 (2011) (citing *United States v. Bryson*, 229 F.3d 425, 426 (2d Cir. 2000) ("[A] court's duty is always to sentence the defendant as he stands before the court on the day of sentencing")), the district court granted the government's motion for upward variance but failed to state the number of levels increase or degree justified by any sentencing factor. Thus, without following Chief Judge Spencer's analysis, reasoning, or logic, the district court merely jumped to the maximum sentence of 20 years' imprisonment on each Count 1 and 3, and then ran them consecutively for a 40-year sentence, or effectively a life sentence, given the shorter life expectancy of Black men,[4] since Mr. Brown was then almost 44 and had served almost 13 years of his 40-year sentence.[5]

4 Life Expectancy For Black Men Has Dropped Significantly: Here's Why - The Plug (tpinsights.com); Black Men Have the Shortest Lifespans of Any Americans. This Theory Helps Explain Why. — ProPublica; Charts of the Week: Black men's life expectancy; student debt and Black households; struggling families | Brookings.

5 Long term incarceration is well known to shorten life. Each year in prison shaves two years off a prisoner's life. See, *e.g.*, Emily Widra, *Incarceration shortens life expectancy*, Prison Policy Initiative (June 26, 2017) https://www.prisonpolicy.org/blog/2017/06/26/life_expectancy/. Indeed, Mr. Brown's health is deteriorating.

REASONS AND ARGUMENT

Callanan v. United States, 364 U.S. 587 (1961), should be overruled or limited as violative of the _Double Jeopardy Clause_ where petitioner was twice convicted and double sentenced to 40 years' consecutive imprisonment for a single violation of the indivisible Hobbs Act, 18 U.S.C. § 1951(a), by attempting to rob a convenience store in a momentary, coterminous conspiracy.

In his petition/motion for rehearing and for rehearing *en banc*, Mr. Brown argued that he could not be lawfully and constitutionally convicted and sentenced twice for violating the Hobbs Act for the same incident because the Hobbs Act is an indivisible criminal statute. The Fourth Circuit Court of Appeals summarily denied the petition without comment (App. C).

As shown, Mr. Brown was convicted of, and sentenced for, both attempted robbery (Count 3) and conspiracy to commit the same attempted robbery (Count 1) of Mr. Fuel on May 8, 2010. He was not convicted of any conduct before or after that single event, and the "conspiracy" was Mr. Brown's momentary agreement to attempt the robbery—again, nothing before or after. The district court found Mr. Brown's participation in the "conspiracy" was coterminous with the attempted robbery itself but sentenced Mr. Brown to consecutive imprisonments for 20 years on each count for a cumulative punishment of 40 years' imprisonment under a statute that has a maximum punishment of 20 years' imprisonment, 18 U.S.C. § 1951(a).

The Hobbs Act, 18 U.S.C. § 1951(a), states in pertinent part:

> Whoever in any way or degree obstructs, delays, or affects commerce . . ., by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be . . . imprisoned not more than twenty years . . .

The Hobbs Act is a singular crime that can be committed in a variety of ways. Robbery, extortion, attempts at either, conspiracy to commit either, threats of physical violence in furtherance of such plan or purpose are all ways the Hobbs Act can be violated in a single occurrence. As shown in Mr. Brown's briefs before the Fourth Circuit, if the Hobbs Act is divisible into many separate crimes, then the government could have conceivably charged Mr. Brown with three counts of threats of physical violence (one for each victim), extortion of the cash, attempted robbery of the store, and conspiracy for a total of not less than six counts with a maximum punishment of not less than 120 consecutive years in prison. But Congress did not intend to carve out many crimes in this single criminal statute without subparts or even paragraphs. "No [Member of Congress] ever suggested that cumulative penalties could be inflicted." *Callanan v. United States*, 364 U.S. 587, 601 (1961). Indeed, Congress did not separate the Hobbs Act robbery statute into subparagraphs with separate provisions for extortion, robbery, attempts, conspiracy, threats, and violence, with the same or different penalties. Instead, Congress merged the provisions into a single statute as one crime with one punishment.[6] Congress merely defined the single crime and described multiple "way[s] or degree[s]" or means of committing the offense, *cf.*

6 The Hobbs Act may have been amended as separate provisions, *Callanan*, 364 U.S. at 597, but it appears and provides notice to the public of a single provision and a single crime with a single punishment. *Taylor*'s categorical approach similarly rejects bifurcations. Moreover, *Blockburger* does not disagree. There this Court decided that two distinct statutory provisions were indeed separate offenses because each distinct provision required proof of a different element and fact to support it. Here, there are not two distinct statutory provisions, but one only. Thus, there is only one offense. *Blockburger v. United States*, 284 U.S. 299 (1932), was decided 16 years before Congress enacted the Hobbs Act. Congress could have easily followed the teachings of *Blockburger* and enacted distinct provisions had it intended to create separate offenses, but it declined, and has declined, to do so. Mr. Brown is guilty of only one crime and, thus, can be punished for only one offense.

Callanan, 364 U.S. at 601. Congress only intended to punish by up to 20 years' imprisonment an occurrence that involved any or all such conduct. The listed means are a set of elements to define the singular crime. Congress intended one punishment for the crime of interference with commerce that could be committed in alternate ways. While separate occurrences could be punished separately, a single occurrence could be punished only once whether any or all the means or alternatives were employed. The single paragraph of the Hobbs Act listing the various means, string commas between the synonymatic means, common *mens rea*, single penalty, and even the title (interference with commerce by threats or violence) all show that the Hobbs Act proscribes one crime that can be committed in several ways, not several distinct crimes with multiple consecutive 20-year imprisonment sentences for the same occurrence.

Regrettably, this Court's predecessor reached a somewhat different conclusion in the five-to-four *Callanan* decision in which The Chief Justice was in the minority. In *Callanan*, this Court determined that two parts, and only two parts, of the Hobbs Act were divisible—conspiracy and completed extortion. *Callanan* carved out conspiracy as a separate crime under the dubious reasoning that the Court had always done so, though the Court stopped short of declaring that a person can be found guilty of two inchoate crimes, such as conspiracy and attempted robbery, and declared only that someone may be found guilty of a completed extortion and the related conspiracy if there was one, *Callanan*, 364 U.S. at 595.[7] Thus, *Callanan* is distinguishable from this *Brown* case and should be limited to its facts or overruled

7 Yet Callanan's second consecutive 12-year imprisonment sentence was suspended, *Callanan*, 364 U.S. at 588.

altogether.

The much better reasoned dissent joined by The Chief Justice and three other Justices employed the principles of statutory construction and found the statute so poorly drafted that it could only state various means or ways to commit a single crime with a single punishment, *Callanan*, 364 U.S. at 597-602. Thus, Congress did not intend cumulative punishment, *Callanan*, 364 U.S. at 592-593, 601, as was here imposed on Mr. Brown.

Mr. Brown has been punished twice for the same inchoate crime—incomplete robbery, for conspiracy is an agreement to commit an offense—not completion of the offense itself. Instead of a reduced sentence for an incomplete crime, *Bifulco v. United States*, 447 U.S. 381, 399 (1980), Mr. Brown received a double sentence for the same crime. Congress did not intend to punish Mr. Brown twice for the same inchoate crime under the Hobbs Act.[8]

"[I]t was wrong to impose two separate sentences upon" him, *Callanan*, 364 U.S. at 599; *Bell v. United States*, 349 U.S. 81, 83 (1955) ("if Congress does not fix the punishment for a federal offense clearly and without ambiguity, doubt will be resolved against [the government]."); *Ladner v. United States*, 358 U.S. 169, 178 (1958); *Prince v. United States*, 352 U.S. 322, 329 (1957); *Busic v. United States*, 446 U.S. 398, 406-07 (1980) (sentencing provisions must provide "clear and definite legislative directive[s]."); *United States v. R.L.C.*, 503 U.S. 291, 309 (1992) (Scalia, J.,

8 Neither did the government charge Mr. Brown with 18 U.S.C. § 371 conspiracy and its five-year imprisonment maximum penalty. No, the government demands two 20-year bites at the same apple. This is not what Congress intended.

concurring in part and concurring in the judgment) ("Where it is doubtful whether the text includes the penalty, the penalty ought not to be imposed").

As this Court has said many times, penal statutes must be clear to the people and construed strictly. "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes." *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939); *United States v. Santos*, 553 U.S. 507, 514 (2008) ("no citizen should be … subjected to punishment that is not clearly prescribed"). "[V]ague sentencing provisions may pose constitutional questions if they do not state with sufficient clarity the consequences of violating a given criminal statute." *United States v. Batchelder*, 442 U.S. 114, 123 (1979). Cumulative punishment may be imposed only "if Congress clearly indicates that it intended to allow courts to impose them." *Rutledge v. United States*, 517 U.S. 292, 303 (1996).

As published, the people, particularly Mr. Brown, are informed that the Hobbs Act is one statute with one crime and one punishment. Mr. Brown should not have been convicted twice, let alone, punished twice. To avoid this double jeopardy and double punishment, the Rule of Lenity must be applied to Mr. Brown. Further, he must not be treated more harshly than similarly situated defendants, especially after his success on prior appeals. See *Oregon v. Ice*, 555 U.S. 160, 171 (2009); *North Carolina v. Pearce*, 395 U.S. 711, 725 (1969), overruled on other grounds by *Alabama v. Smith*, 490 U.S. 794 (1989) ("[d]ue process . . . requires that vindictiveness against a defendant for having successfully attacked his first conviction must play no part in the sentence he receives" on remand.)

CONCLUSION

Petitioner Brown was unlawfully and unconstitutionally twice convicted and sentenced for the same inchoate crime in violation of the *Double Jeopardy Clause*, and he was sentenced unfairly and more harshly in violation of the *Due Process Clause*. Mr. Brown has been punished twice for violating the Hobbs Act on May 8, 2010, at Mr. Fuel. Thus, one of his convictions and sentences should be vacated, and a maximum of 20 years' imprisonment imposed.

This petition for a writ of certiorari should be granted. Yet the Court's decision in *Barrett v. United States*, No. 24-5774, may impact its decision here.

Respectfully submitted,

WARREN HAROLD BROWN
PETITIONER

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APPENDIX

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APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED SEPTEMBER 30, 2025 ..... 12a

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4064

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WARREN HAROLD BROWN,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, Senior District Judge. (3:11-cr-00063-HEH-DJN-1)

Submitted: April 25, 2025 Decided: June 26, 2025

Before WILKINSON and AGEE, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Scott W. Putney, Norfolk, Virginia, for Appellant. Jessica D. Aber, United States Attorney, Erik S. Siebert, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In 2011, Warren Harold Brown and his codefendant, Winston Oliver II, were convicted of conspiracy to commit Hobbs Act robbery and attempted Hobbs Act robbery, in violation of 18 U.S.C. § 1951, and two counts of use of a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c)(1). We subsequently vacated Brown's § 924(c) convictions and remanded for resentencing. On remand, the district court upwardly varied from the advisory Sentencing Guidelines range and sentenced Brown to 240 months' imprisonment on each of the robbery counts, to be served consecutively, for a total sentence of 480 months' imprisonment. Brown now appeals, arguing that his sentence is procedurally and substantively unreasonable. We affirm.

"We review a district court's sentence for an abuse of discretion." *United States v. Provance*, 944 F.3d 213, 217 (4th Cir. 2019). Under this standard, "we review the district court's legal conclusions de novo and factual findings for clear error." *Id.* (internal quotation marks and citation omitted). We must first ensure that the district court did not commit a procedural error, such as "failing to calculate (or improperly calculating) the Guidelines range, . . . selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence." *Gall v. United States*, 552 U.S. 38, 51 (2007). "We then consider the substantive reasonableness of the sentence, taking into account the totality of the circumstances, including the extent of any variance from the Guidelines range and giving due deference to the district court's decision that the 18 U.S.C. § 3553(a) factors, on a whole, justify the extent of the variance." *United States v. Huskey*, 90 F.4th 651, 677 (4th Cir. 2024) (cleaned up).

In challenging his sentence's procedural reasonableness, Brown argues that the district court did not adequately consider his rehabilitation and failed to adequately explain the extent of the upward variance. We have reviewed the record and discern no error. The court acknowledged that Brown had no disciplinary infractions, worked while incarcerated, and had completed almost 30 educational classes. And the court thoroughly explained why the § 3553(a) factors justified the upward variance. In particular, the court noted Brown's extensive criminal history; the severe physical and psychological damage to the victims; and the seriousness of Brown's offense conduct.

Brown also argues that the district court's imposition of consecutive sentences was unreasonable. In his view, the conspiracy to commit robbery and attempted robbery were coterminous, and, thus, the court abused its discretion by imposing separate sentences. However, "separate sentences are entirely appropriate where, as here, a defendant is convicted of both the conspiracy and the accomplishment of that end." *United States v. Oliver*, 133 F.4th 329, 340 (4th Cir. 2025). In light of this principle, and given the district court's thorough explanation of its chosen sentence, we conclude that the imposition of consecutive sentences was well within its discretion.

Finally, we conclude that Brown's sentence was substantively reasonable. As discussed, the district court considered Brown's criminal history, rehabilitation, and offense conduct. Applying the § 3553(a) factors to Brown's circumstances, the court concluded that 480 months' imprisonment was an appropriate sentence. We discern no abuse of discretion in this conclusion.

Accordingly, we affirm the district court's judgment. 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

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Richmond Division

UNITED STATES OF AMERICA

v.

WARREN HAROLD BROWN,
Defendant.

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 3:11CR00063-001

USM Number: 77808-083

Defendant's Attorney: Laura J. Koenig, Esq.

The defendant was found guilty on Counts 1, 2, 3, and 4 of the Superseding Indictment after a plea of not guilty. The defendant's conviction and sentence on Count 2 were vacated on July 30, 2019, and his conviction and sentence on Count 4 were vacated on October 5, 2022. Accordingly, the defendant is adjudged guilty of these offenses:

Title and Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1951(a)	CONSPIRACY TO COMMIT ROBBERY AFFECTING COMMERCE	May 2010	1
18 U.S.C. § 1951(a) and (2)	ATTEMPT TO COMMIT ROBBERY AFFECTING COMMERCE	5/8/2010	3

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.

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

January 19, 2023
Date of Imposition of Judgment

/s/
Signature of Judge

Henry E. Hudson, Senior United States District Judge
Name and Title of Judge

January 23, 2023
Date

Case Number: **3:11CR00063-001**
Defendant's Name: **BROWN, WARREN HAROLD**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **FOUR HUNDRED EIGHTY (480) MONTHS**. This term consists of TWO HUNDRED FORTY (240) MONTHS on each of Count 1 and Count 3, to be served consecutively. The defendant shall receive credit for any time served on these charges.

The Court makes the following recommendations to the Bureau of Prisons:
Designate the defendant to a facility near his family.

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

☒ The defendant is remanded to the custody of the United States Marshal.

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

Case Number: **3:11CR00063-001**
Defendant's Name: **BROWN, WARREN HAROLD**

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of THREE (3) YEARS. This term consists of THREE (3) YEARS on each of Count 1 and Count 3, to be served concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☐ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

Case Number: 3:11CR00063-001
Defendant's Name: BROWN, WARREN HAROLD

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date

Case Number: **3:11CR00063-001**
Defendant's Name: **BROWN, WARREN HAROLD**

SPECIAL CONDITIONS OF SUPERVISION

1) The defendant shall abide by any special conditions as set by the probation officer at the inception of supervision.

Case Number: 3:11CR00063-001
Defendant's Name: BROWN, WARREN HAROLD

CRIMINAL MONETARY PENALTIES

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ **200.00***	$ 0.00	$ 0.00	$ 0.00	$ 0.00

**The special assessment has been paid in full*

☐ 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.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
TOTALS			

☐ Restitution amount ordered pursuant to plea agreement $

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

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Payments of Restitution are to made payable to the Clerk, United States District Court, Eastern District of Virginia.

Case Number: **3:11CR00063-001**
Defendant's Name: **BROWN, WARREN HAROLD**

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:

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.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

FILED: September 30, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4064
(3:11-cr-00063-HEH-DJN-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

WARREN HAROLD BROWN

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Agee, and Senior Judge Floyd.

For the Court

/s/ Nwamaka Anowi, Clerk