

NO. _____

In the
Supreme Court of the United States

CHARLES RAYMOND WABLE, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

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

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181 F.4th 441

United States Court of Appeals, Fourth Circuit.

UNITED STATES of America, Plaintiff - Appellee,

v.

Charles Raymond WABLE, Defendant - Appellant.

No. 23-4605

|

Argued: January 30, 2026

|

Decided: July 10, 2026

Synopsis

Background: Defendant was convicted in the United States District Court for the Northern District of West Virginia, [Thomas S. Klee](#), Chief Judge, of unlawful possession of a firearm by a felon and tampering with a witness by corrupt persuasion, and he received a 180-month prison sentence. Defendant appealed.

Holdings: The Court of Appeals, [Berner](#), Circuit Judge, held that:

[1] district court did not plainly err by assuming defendant's prior West Virginia conviction for cultivating marijuana fell under West Virginia Uniform Controlled Substances Act, which could qualify as felony controlled substance offense under Sentencing Guidelines;

[2] West Virginia's Uniform Controlled Substances Act was a divisible statute;

[3] defendant's conviction under the Act for cultivating marijuana qualified as felony controlled substance offense that supported base offense level of 26 under Sentencing Guidelines; and

[4] district court did not fail to address defendant's nonfrivolous argument for a lesser sentence.

Affirmed.

Procedural Posture(s): Appellate Review; Sentencing or Penalty Phase Motion or Objection.

West Headnotes (24)

[1] [Sentencing and Punishment](#) ➞ [Operation and effect of guidelines in general](#)**[Sentencing and Punishment](#) ➞ [Mandatory or advisory](#)**

The Sentencing Guidelines provide an advisory framework for sentencing that considers both the offense of conviction and the individual's personal characteristics.

[2] [Sentencing and Punishment](#) ➞ [Factors or Purposes in General](#)**[Sentencing and Punishment](#) ➞ [Operation and effect of guidelines in general](#)**

In imposing a sentence, a district court must be guided by the Sentencing Guidelines and by the statutory sentencing factors. [18 U.S.C.A. § 3553\(a\)](#); [U.S.S.G. § 1B1.1 et seq.](#)

[3] [Sentencing and Punishment](#) ➞ [Operation and effect of guidelines in general](#)**[Sentencing and Punishment](#) ➞ [Conduct of hearing](#)**

In imposing a sentence, a district court must first correctly calculate the applicable Sentencing Guidelines range, and, next, the court must provide both parties an opportunity to argue for whatever sentence they deem appropriate. [U.S.S.G. § 1B1.1 et seq.](#)

[4] [Sentencing and Punishment](#) ➞ [Extent of Punishment in General](#)**[Sentencing and Punishment](#) ➞ [Factors or Purposes in General](#)**

After calculating the applicable Sentencing Guidelines range and providing the parties an opportunity to argue for whatever sentence they deem appropriate, a district court must conclude sentencing by considering all of the statutory sentencing factors, keeping in mind the overarching provision instructing district courts to impose a sentence sufficient, but not greater than necessary, to accomplish the goals of sentencing. [18 U.S.C.A. § 3553\(a\)](#); [U.S.S.G. § 1B1.1 et seq.](#)

[5] [Criminal Law](#) ➞ [Necessity of Objections in General](#)

Where a party raises an issue for the first time on appeal, the Court of Appeals' review is for plain error.

[6] [Criminal Law](#) ➔ [Necessity of Objections in General](#)

To prevail on plain error review, a defendant must establish that the district court erred, that the error was plain, and that the error affected his substantial rights, but even when all three requirements are met, the decision to grant relief remains within the discretion of the Court of Appeals.

[7] [Criminal Law](#) ➔ [Necessity of Objections in General](#)

The Court of Appeals may exercise its discretion to grant relief on plain error review where it finds the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.

[8] [Criminal Law](#) ➔ [Adding to or changing grounds of objection](#)

Where a party objected to a Sentencing Guidelines calculation on the basis of one theory, but on appeal proceeds under a different theory, the Court of Appeals reviews for plain error. [U.S.S.G. § 1B1.1 et seq.](#)

[9] [Criminal Law](#) ➔ [Sentencing and Punishment](#)

District court did not plainly err by assuming defendant's prior West Virginia conviction for cultivating marijuana fell under West Virginia Uniform Controlled Substances Act, which could qualify as a felony conviction for a controlled substance offense that supported base offense level of 26 under Sentencing Guidelines for unlawfully possessing firearm as a felon and witness tampering, rather than under that state's general attempt statute, which would not have been a controlled substance offense; state court records were murky, as they provided some indication that defendant was convicted of violating Uniform Controlled Substances Act, under which he was initially indicted, but they also provided some support for defendant's contention that he was convicted under general attempt statute. [18 U.S.C.A. §§ 922\(g\)\(1\), 1512\(b\)\(1\)](#); [W. Va. Code Ann. §§ 60A-1-101\(q\), 60A-1-101\(z\), 60A-4-401](#); [U.S.S.G. §§ 2K2.1\(a\)\(1\) \(2021\), 4B1.2\(b\)](#).

[10] [Sentencing and Punishment](#) ➔ [Retroactive Operation](#)

On appeal, the Court of Appeals relies on the Sentencing Guidelines in effect on the date of the defendant's sentencing. [U.S.S.G. § 1B1.11\(a\)](#).

[11] [Criminal Law](#) ➞ [Records](#)

Court of Appeals would take judicial notice of records from West Virginia state court that defendant did not present below, for purposes of determining whether his prior West Virginia conviction for cultivating marijuana fell under West Virginia Uniform Controlled Substances Act, which qualified as a felony conviction for a controlled substance offense that supported base offense level of 26 under Sentencing Guidelines for his federal convictions for unlawfully possessing firearm as a felon and witness tampering, or fell under that state's general attempt statute, which would not have been a controlled substance offense. [18 U.S.C.A. §§ 922\(g\)\(1\), 1512\(b\)\(1\)](#); [U.S.S.G. §§ 2K2.1\(a\)\(1\) \(2021\), 4B1.2\(b\)](#); [Fed. R. Evid. 201](#).

[12] [Criminal Law](#) ➞ [Records](#)

The Court of Appeals may take judicial notice of documents not considered by the district court below that may not be reasonably disputed and are material to the appeal. [Fed. R. Evid. 201](#).

[13] [Sentencing and Punishment](#) ➞ [Burden of proof](#)

The government bears the burden before the sentencing court to establish that a prior offense qualifies for purposes of a Sentencing Guidelines calculation. [U.S.S.G. § 1B1.1 et seq.](#)

[14] [Sentencing and Punishment](#) ➞ [Grade, degree or classification of other offense](#)

Where a statute criminalizes both actual and attempted conduct, a defendant's conviction for that offense cannot qualify as a controlled substance offense for purposes of calculating the defendant's base offense level under the Sentencing Guidelines. [U.S.S.G. §§ 2K2.1\(a\), 4B1.2\(b\)](#).

[15] [Sentencing and Punishment](#) ➞ [Offense or adjudication in other jurisdiction](#)

West Virginia's Uniform Controlled Substances Act was a “divisible” statute, for purposes of determining whether defendant's prior conviction under the Act for cultivating marijuana qualified as a felony conviction for a controlled substance offense that supported a base offense level of 26 under Sentencing Guidelines for his federal convictions for unlawfully possessing firearm as a felon and witness tampering; the Act listed offenses in

the disjunctive, establishing separate offenses for manufacturing, delivering, or possessing a controlled substance with intent. [18 U.S.C.A. §§ 922\(g\)\(1\), 1512\(b\)\(1\)](#); [W. Va. Code Ann. § 60A-4-401\(a\)](#); [U.S.S.G. §§ 2K2.1\(a\)\(1\) \(2021\), 4B1.2\(b\)](#).

[16] [Criminal Law](#) ➡ [Criminal act or omission](#)

A statute is “divisible” when it lists elements in the alternative, and thereby defines multiple crimes; by contrast, a statute is “indivisible” if it sets out a single set of elements to define a single crime or enumerates various factual means of committing a single element.

[17] [Sentencing and Punishment](#) ➡ [Operation and effect of guidelines in general](#)

Where a statute is divisible, meaning it lists elements in the alternative, and thereby defines multiple crimes, a Sentencing Guideline may properly apply to one of the enumerated crimes even if it does not apply to all of them. [U.S.S.G. § 1B1.1 et seq.](#)

[18] [Sentencing and Punishment](#) ➡ [Offense or adjudication in other jurisdiction](#)

Defendant's prior conviction under West Virginia's Uniform Controlled Substances Act for cultivating marijuana qualified as a felony “controlled substance offense” that supported a base offense level of 26 under the Sentencing Guidelines for his federal convictions for unlawfully possessing firearm as a felon and witness tampering; by its own definitions, the Act criminalized enumerated substantive offenses and did not encompass attempt offenses. [18 U.S.C.A. §§ 922\(g\)\(1\), 1512\(b\)\(1\)](#); [W. Va. Code Ann. §§ 60A-1-101\(q\), 60A-1-101\(z\), 60A-4-401\(a\)](#); [U.S.S.G. §§ 2K2.1\(a\)\(1\) \(2021\), 4B1.2\(b\)](#).

[19] [Sentencing and Punishment](#) ➡ [Grade, degree or classification of other offense](#)

Under the “modified categorical approach,” a court looks to a limited class of documents, such as the indictment, jury instructions, or plea agreement and colloquy, to determine the defendant's specific crime under a divisible statute, in order to determine whether that crime was a felony controlled substance offense, for purposes of calculating the defendant's base offense level under the Sentencing Guidelines. [U.S.S.G. §§ 2K2.1\(a\), 4B1.2\(b\)](#).

[20] [Sentencing and Punishment](#) ➡ [Sufficiency](#)

District court did not fail to address defendant's nonfrivolous argument for a lesser sentence for unlawfully possessing a firearm as a felon and witness tampering, that his chemical assault by correctional officers at the regional jail warranted a downward departure in his sentence; court noted repeatedly that it had taken into account all of defendant's submissions, and it opined at length about defendant's various mitigation arguments while weighing the statutory sentencing factors. [18 U.S.C.A. §§ 922\(g\)\(1\), 1512\(b\)\(1\), 3553\(a\)](#); [U.S.S.G. § 1B1.1 et seq.](#)

[21] [Criminal Law](#) 🔑 [Sentencing](#)

Court of Appeals reviews claims of a district court's failure to address a nonfrivolous sentencing argument under the abuse of discretion standard.

[22] [Sentencing and Punishment](#) 🔑 [Necessity that punishment be individualized](#)
[Sentencing and Punishment](#) 🔑 [Downward Departures](#)

At sentencing, the district court must conduct an individualized assessment of each case, which includes an obligation to consider the defendant's nonfrivolous arguments for a downward departure under the Sentencing Guidelines. [U.S.S.G. § 1B1.1 et seq.](#)

[23] [Sentencing and Punishment](#) 🔑 [Sufficiency](#)

In assessing whether a district court has considered a defendant's nonfrivolous arguments at sentencing, the Court of Appeals looks to the statements contained in the sentencing record, and the adequacy of the district court's explanation depends on the complexity of each case.

[24] [Criminal Law](#) 🔑 [Sentencing](#)

There is no mechanical approach to the Court of Appeals' sentencing review.

Appeal from the United States District Court for the Northern District of West Virginia, at Clarksburg. [Thomas S. Kleeh](#), Chief District Judge. (1:22-cr-00037-TSK-MJA-1)

Attorneys and Law Firms

ARGUED: Jonathan D. Byrne, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellant. Andrew R. Cogar, OFFICE OF THE UNITED STATES ATTORNEY, Clarksburg, West Virginia, for Appellee. ON BRIEF: [Wesley P. Page](#), Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellant. [Matthew L. Harvey](#), United States Attorney, Randolph J. Bernard, Acting United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Clarksburg, West Virginia, for Appellee.

Before [AGEE](#), [BENJAMIN](#), and [BERNER](#), Circuit Judges.

Opinion

Affirmed by published opinion. Judge [Berner](#) wrote the opinion, in which Judge [Agee](#) and Judge [Benjamin](#) joined.

[BERNER](#), Circuit Judge:

***445** Charles Wable challenges his 180-month prison sentence for unlawfully possessing a firearm and witness tampering. On appeal, Wable argues that the district court incorrectly calculated his base offense level under the United States Sentencing Guidelines. He also asserts that the district court abused its discretion by failing to consider his nonfrivolous sentencing argument. We disagree and affirm Wable's sentence.

I. Background

While on supervised release for unrelated convictions, Wable acquired a number of weapons, including a machete, brass knuckles, and a loaded assault-style rifle. United States Probation officers discovered the weapons during a routine home visit. Wable subsequently pressured a young man to testify falsely at Wable's revocation hearing that the rifle belonged to him rather than Wable. The young man later recanted and testified that Wable had not only paid him to lie but had also threatened to harm his mother if he refused to do so. Wable was subsequently convicted by a jury of unlawful possession of a firearm, pursuant to [18 U.S.C. §§ 922\(g\)\(1\)](#) and [924\(a\)\(2\)](#), and tampering with a witness by corrupt persuasion, pursuant to [18 U.S.C. § 1512\(b\)\(1\)](#).

[1] In advance of Wable's sentencing for these convictions, the United States Probation Office prepared a presentence investigation report (PSR). A PSR compiles relevant information on the individual and the applicable Sentencing Guidelines for use by the sentencing court in

determining the appropriate sentence. [Fed. R. Crim. P. 32\(c\)–\(d\)](#). The Sentencing Guidelines provide an advisory framework for sentencing that considers both the offense of conviction and the individual's personal characteristics. To calculate the applicable sentencing range, the Sentencing Guidelines first assign a number known as the “base offense level.” The base offense level for unlawfully possessing a firearm ranges from six to twenty-six depending on the particular circumstances of the defendant's offense. See [U.S.S.G. § 2K2.1\(a\)](#).

The Probation Office calculated Wable's base offense level at the highest end of that range, twenty-six, because of the type of firearm Wable possessed and because Wable had previously been convicted of two “controlled substance offense” felonies. [Id. § 2K2.1\(a\)\(1\)](#). The Probation Office identified two prior controlled substance felony convictions as the basis for its calculation in Wable's PSR: a 2007 federal felony conviction for possession with intent to distribute cocaine and a 2006 West Virginia state-law felony conviction for cultivating marijuana.

Although he was represented by legal counsel, Wable submitted a number of objections to the report *pro se*. Among these objections, Wable argued that the court should not consider his 2006 conviction for cultivating marijuana as a qualifying controlled substance offense because, Wable contended, such cultivation should not be criminalized.

Wable also recounted an incident that he believed should merit a downward departure from the recommended sentencing range. Wable told the court that he had been “chemically assaulted” by correctional *446 officers while in pre-trial detention when he sought medical help for breathing issues related to his [chronic obstructive pulmonary disease](#). Parties' Joint Appendix (J.A.) 38. Wable claimed that the officers sprayed him with a brown substance multiple times, shoved him, and then sprayed him with water before placing him in a medical cell. Although he eventually received medical attention, Wable described experiencing a burning sensation in his face, lungs, eyes, and upper body following the attack, presumably from the brown substance. Wable informed the district court that the injuries he suffered precluded him from being able to testify at his trial. He also stated that he filed a complaint with the United States Marshals Service and attempted to file multiple grievances about this incident.

[2] [3] [4] In imposing a sentence, a district court must be “guided by the Sentencing Guidelines and by the provisions of [18 U.S.C.] § 3553(a).” [United States v. Green](#), 436 F.3d 449, 456 (4th Cir. 2006). The district court must first “correctly calculat[e] the applicable Guidelines range.” [Gall v. United States](#), 552 U.S. 38, 49, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007). Next, the court must provide “both parties an opportunity to argue for whatever sentence they deem appropriate.” [United States v. Abu Ali](#), 528 F.3d 210, 260 (4th Cir. 2008) (quoting [Gall](#), 552 U.S. at 49, 128 S.Ct. 586). The court must conclude by “ ‘consider[ing] all of the § 3553(a)’ factors, keeping in mind the ‘overarching provision instructing district courts to impose a sentence sufficient, but not greater than necessary[,]’ to accomplish the goals of sentencing.” [Id.](#) (internal citations

omitted) (quoting [*Kimbrough v. United States*, 552 U.S. 85, 101, 128 S.Ct. 558, 169 L.Ed.2d 481 \(2007\)](#)). The 3553(a) factors include: 1) the nature and circumstances of the offense and history and characteristics of the defendant; 2) the need for the sentence imposed; 3) the kinds of sentences available; 4) the kinds of sentences and sentencing ranges for the offense; 5) policy statements by the Sentencing Commission; 6) the need to avoid unwarranted sentencing disparities amongst similarly situated individuals; and, 7) the need to provide restitution to victims of the offense. [18 U.S.C. § 3553\(a\)\(1\)–\(7\)](#).

During the sentencing hearing for Wable's unlawful possession and witness tampering convictions, the district court first noted that Wable's "objections ha[d] been lodged as part of [the] court's record[.]" J.A. 21. The district court noted, however, that it did not "anticipate speaking about [the objections] at great length[.]" J.A. 21. The court adopted the PSR in full. The district court relied on the PSR to calculate Wable's base offense level as twenty-six. The district court also applied a two-level enhancement under Section 3C1.1 of the Sentencing Guidelines, which permits a district court to adjust a defendant's sentencing range upward where the court finds that the defendant willfully obstructed justice. [U.S.S.G. § 3C1.1](#). On the basis of these calculations, the district court determined that Wable's recommended sentencing range was between 130 to 162 months of imprisonment. Both Wable and the Government accepted these calculations and the district court's adoption of the PSR without objection.

Wable spoke on his own behalf at his sentencing hearing and requested a downward departure from the recommended range. In support of this request, Wable described the sexual and physical abuse he suffered as a young child. He also shared his history of drug addiction, which began during his childhood. Finally, Wable spoke to the circumstances underlying his convictions for unlawfully possessing a firearm and tampering with a witness, including *447 his belief that the evidence had been unlawfully obtained.

The Government urged the district court to impose a sentence on the high-end of the Guidelines range because Wable had been on supervised release at the time of the offenses. It also argued that the nature of the offenses, Wable's lack of remorse, and Wable's extensive criminal history, including a prior conviction for second-degree murder, weighed in favor of a lengthier sentence.

The district court considered the arguments that Wable put forth, both in his *pro se* objections and during the hearing, as well as those of the Government. After weighing the 3553(a) factors, the district court denied Wable's request for a downward departure. To the contrary, the district court determined that "the guidelines range [was] inadequate in this case to address the seriousness of the offense conduct and Mr. Wable's lifelong violent criminal history." J.A. 55. Accordingly, the district court sentenced Wable to 120 months' imprisonment on the firearms conviction and 180 months on the witness tampering conviction, to be served concurrently, along with three years of supervised release.

In imposing this sentence, the district court stressed that it had considered Wable's lack of “any indication of remorse of any kind for what [Wable] did in this case and, frankly, what [Wable had] done [his] entire adult life.” J.A. 51. The district court described witnessing the “terr[or]” of the young man who Wable pressured to falsely testify, noting that the man “will carry around the scar of ever having crossed paths with [Wable] ... [for] the remainder of [his] life.” J.A. 53. The district court devoted significant time to reviewing Wable's extensive criminal history. The district court also noted that Wable's supervised release had been “revoked in each and every [one] of those prior federal felony cases at least once, and sometimes on more than one occasion.” J.A. 52. On the basis of Wable's decades-long criminal history, the district court concluded that Wable posed a significant risk of recidivism. Finally, the district court stressed the danger posed by Wable's conduct, noting the “arsenal of weapons” that he had amassed. J.A. 52.

The district court recommended to the Federal Bureau of Prisons (BOP) that Wable be given credit for time served and be considered for substance abuse treatment and related programming. The court waived the imposition of any fines, although it imposed a mandatory assessment of \$200. Finally, the district court recommended that, because of Wable's serious health conditions, the BOP designate him for placement at a federal medical center. In closing, the district court reiterated that:

Any sentence within the guideline range, frankly, would not account for the seriousness of the offense conduct in this case, and moreover, would result in a lack of punishment, frankly, for both offenses for which Mr. Wable was convicted. The Court also considers, in making the decision to vary upward, Mr. Wable's lengthy, extensive, and violent criminal history, his repeated recidivism despite multiple convictions even in federal court, plus his history of having his supervised release terms revo[ked.]

J.A. 60.

Wable timely appealed his sentence, and we have jurisdiction pursuant to [28 U.S.C. § 1291](#) and [18 U.S.C. § 3742\(a\)](#).

II. Analysis

Wable argues on appeal that the district court plainly erred in calculating his base offense level and abused its discretion in ***448** failing to consider his nonfrivolous argument at sentencing. For the reasons below, we disagree and affirm the sentence.

A. Wable's Base Offense Level

[5] [6] [7] [8] Wable argues, for the first time on appeal, that the district court incorrectly calculated his base offense level. Where a party raises an issue for the first time on appeal, our review is for plain error. [United States v. Olano, 507 U.S. 725, 732–35, 113 S.Ct. 1770, 123 L.Ed.2d 508 \(1993\)](#).¹ In order to prevail, Wable must establish that the district court erred, that the error was plain, and that the error affected his substantial rights. [Id. at 732, 113 S.Ct. 1770](#). Even when all three requirements are met, the decision to grant relief remains within the discretion of this court. [Id. at 735, 113 S.Ct. 1770](#). We may exercise our discretion to grant relief where we find the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. [Id. at 736, 113 S.Ct. 1770](#).

We begin by recounting the district court's calculation of Wable's base offense level and summarizing the arguments on appeal. Then, we proceed to explain why Wable's challenges fail.

i. The District Court's Calculation

[9] [10] In calculating the appropriate Guidelines range, the district court determined that Wable's base offense level for unlawfully possessing a firearm was twenty-six. Sentencing Guidelines [Section 2K2.1\(a\)\(1\)](#) provides a base offense level of twenty-six if: 1) the offense involved a semiautomatic firearm capable of accepting a large capacity magazine; and 2) the defendant had, as relevant here, at least two prior felony convictions for a controlled substance offense. [U.S.S.G. § 2K2.1\(a\)\(1\) \(2021\)](#).² Wable does not dispute that he possessed a semiautomatic, large capacity rifle. He argues only that the district court erred in finding that he had two qualifying prior felony convictions for a controlled substance offense.

A controlled substance offense qualifies for purposes of the base offense level calculation where it is:

an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

[U.S.S.G. § 4B1.2\(b\).](#)

The PSR identifies two of Wable's prior convictions as qualifying controlled substance offenses: 1) a 2007 conviction for possession with intent to distribute cocaine in violation of federal law, and 2) a 2006 conviction for cultivating marijuana in violation of West Virginia state law. Our focus is on the second.

With respect to Wable's state-law conviction, the PSR explains that law enforcement officers had seized fifty marijuana plants from Wable's property in West Virginia. *449 The PSR provides no further details about the offense. Relevant here, the PSR does not say under which West Virginia statute Wable was convicted. The district court adopted the PSR in full. Like the PSR, the district court simply assumed that Wable had been convicted of violating the West Virginia Uniform Controlled Substances Act. The district court did not expressly determine whether Wable's state-law conviction properly qualified as a controlled substance offense for purposes of [Section 2K2.1\(a\)\(1\)](#).

Wable makes two arguments regarding the qualifying controlled substance offense determination. First, he argues that, contrary to the district court's assumption, he was convicted under the West Virginia General Attempt statute, not the Uniform Controlled Substances Act. A conviction under the General Attempt statute does not qualify for purposes of the Guidelines calculation and therefore the calculation would be incorrect. Second, Wable argues that even if this court assumes his conviction was under the Uniform Controlled Substances Act, it also would not qualify. Wable therefore argues that, regardless of the statute under which he was convicted, the district court plainly erred.

We begin by determining whether the district court erred by treating Wable's conviction as one falling under the West Virginia Uniform Controlled Substances Act rather than one under that state's General Attempt statute. We then analyze the impact on Wable's conviction of [United States v. Campbell](#), 22 F.4th 438 (4th Cir. 2022).

ii. The Relevant Statute

Wable contends that he was convicted of a general attempt offense under the General Attempt statute, not a manufacturing offense under the Uniform Controlled Substances Act. At the time of Wable's sentencing, an attempt offense could not qualify as a controlled substance offense for purposes of [Section 2K2.1](#). See [Campbell](#), 22 F.4th at 444–46. Accordingly, if Wable can demonstrate that he was convicted of a general attempt offense, then his sentencing range was improperly calculated.

The PSR says that Wable's state-law conviction was for “cultivating marijuana.” No such offense is specifically named under West Virginia law. Rather, West Virginia has a general drug statute: the West Virginia Uniform Controlled Substances Act. [W. Va. Code § 60A-4-401](#). That Act makes it a crime “for any person to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance.” [W. Va. Code § 60A-4-401\(a\)](#). A subset of “manufacturing” includes the “production” of a controlled substance by “planting, cultivation, growing or harvesting [] a controlled substance.” [W. Va. Code § 60A-1-101\(q\), \(z\)](#).

[11] [12] Wable provides on appeal supplementary records from the West Virginia state court that he had not presented below.³ Though Wable argues that these records show he was convicted under the General Attempt statute, the state court records of this conviction are murky at best.

The state court records provide some indication that Wable was convicted of violating the Uniform Controlled Substances Act. Indeed, Wable was initially indicted under the Act. The sentencing order also states that the jury found him *450 guilty of this offense. The state records, on the other hand, support Wable's contention that he was convicted of violating the General Attempt statute. For example, the sentencing order indicates that Wable was sentenced for the “lesser-included offense” of attempt to cultivate marijuana under the General Attempt statute. Attempt to cultivate marijuana is not, however, a lesser included offense of manufacturing marijuana. [W. Va. R. Crim. P. 31\(c\)](#). Augmenting this confusion, the state court sentenced Wable to one-to-five years' incarceration, the applicable statutory penalty for violating the Uniform Controlled Substances Act. By contrast, the General Attempt statute has a statutory maximum penalty of three years' incarceration.

[13] The timing of Wable's argument proves dispositive. Had Wable objected to the classification of his conviction at sentencing, then the state records' lack of clarity would weigh in his favor. This is because the Government bears the burden before the sentencing court to establish that a prior offense qualifies for purposes of the Guidelines calculation. Now, on appeal, Wable bears the burden under the plain error standard. Because the state court records do not clearly demonstrate that Wable was convicted of a General Attempt offense, we conclude that Wable has not met his burden to establish that the district court plainly erred by assuming he was convicted of violating the Uniform Controlled Substances Act.

We next analyze whether [Campbell](#) precludes this conviction from qualifying for purposes of the Guidelines calculation.

iii. Divisibility of the Uniform Controlled Substances Act

[14] In *United States v. Campbell*, this court held that the sentencing Guideline definition for a qualifying controlled substance offense unambiguously applied only to a completed offense and not to attempt offenses. [22 F.4th 438, 444, 446 \(4th Cir. 2022\)](#). Where a statute criminalizes both actual and attempted conduct, a defendant's conviction for that offense cannot qualify for purposes of [Section 2K2.1\(a\)](#).⁴ *Id.* The West Virginia Uniform Controlled Substances Act was the statute at issue in *Campbell*. Wable argues, therefore, that our precedent in *Campbell* precludes a conviction under that Act from qualifying for purposes of the calculation of the base offense level.

[15] Whether Wable is correct turns on the divisibility of the Uniform Controlled Substances Act. If the statute is not divisible, then our precedent in *Campbell* controls and the district court erred in calculating Wable's base offense level. If the statute is divisible, however, then we must consider whether a manufacturing offense like Wable's should be treated differently than the offense at issue in *Campbell*, even though they are both included in the same statute.

[16] [17] We begin our inquiry with the statutory language. A statute is divisible when it “list[s] elements in the alternative, and thereby define[s] multiple crimes.” *Mathis v. United States*, [579 U.S. 500, 505, 136 S.Ct. 2243, 195 L.Ed.2d 604 \(2016\)](#). For example, a statute criminalizing both “starting or failing to put out a fire” would be divisible. By contrast, a statute is indivisible if it sets out a single “set of elements to define a single crime” or “enumerates various factual means of committing a single element.” *Id.* at 505–06, [136 S.Ct. 2243](#). Thus, for example, a ***451** statute that only criminalizes “starting a fire” or criminalizes “starting a fire, including by matches or explosives,” would be indivisible. In the first example, the statute outlines two separate crimes whereas in the latter example, the statute sets forth only one crime or simply describes different ways of committing the same crime. Relevant here, where a statute is divisible, a sentencing Guideline may properly apply to one of the enumerated crimes even if it does not apply to all of them. *See generally id.* at 506–09, [136 S.Ct. 2243](#).

The West Virginia Uniform Controlled Substances Act makes it “unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance.” [W. Va. Code § 60A-4-401\(a\)](#). The language of the Act is similar to the South Carolina statute that this court found divisible in *United States v. Boyd*, [55 F.4th 272, 276-77 \(4th Cir. 2022\)](#) (analyzing [S.C. Code Ann. § 44-53-370\(a\)\(1\)](#)). Like the statute in *Boyd*, the Act lists the offenses in the disjunctive, establishing separate offenses for manufacturing, delivering, or possessing with intent. *See W. Va. Code § 60A-4-401(a)*. We therefore conclude that the statute is divisible.

[18] [19] Having concluded that the Act is divisible, we must identify which of the enumerated crimes forms the basis of Wable's conviction. *See Mathis*, [579 U.S. at 505-06, 136 S.Ct. 2243](#). This is known as the “modified categorical approach,” whereby we look to “a limited class of documents” such as the “indictment, jury instructions, or plea agreement and colloquy,” to

determine the defendant's specific crime. *Id.* We must then determine if the offense of conviction properly qualifies for purposes of [Section 2K2.1\(a\)](#). *Id.*

Wable was convicted for cultivating marijuana, a manufacturing offense under the Uniform Controlled Substances Act, not of delivering a controlled substance, the crime at issue in *Campbell*. The Act defined “delivery” as “the actual, constructive or *attempted transfer* from one person to another of” controlled substances. [22 F.4th at 441–42](#) (quoting [W. Va. Code. § 60A-1-101\(h\)](#) (emphasis in original)). A person convicted of delivering a controlled substance under the Act may have only *attempted* delivery. *Id.* at 444. Therefore, *Campbell* held that a delivery offense under the Act does not qualify as a controlled substance offense for purposes of [Section 2K2.1\(a\)](#).

The “manufacturing” offense does not suffer the same defect as the “delivery” offense. The Act defines “manufacturing” as “the production, preparation, propagation, compounding, conversion or processing of a controlled substance.” [W. Va. Code. § 60A-1-101\(q\)](#). The Act further defines “production” as “the manufacture, planting, cultivation, growing or harvesting of a controlled substance.” *Id.* § 60A-1-101(z). By its own definitions, the Act criminalizes the substantive offenses enumerated above and does not encompass attempt offenses. A conviction for manufacturing a controlled substance under the Act could not encompass an attempt. Therefore, manufacturing offenses properly qualify as controlled substance offenses for purposes of [Section 2K2.1\(a\)\(1\)](#). See, e.g., [United States v. Groves](#), 65 F.4th 166, 171–74 (4th Cir. 2023) (distinguishing a federal drug distribution statute from the statute at issue in *Campbell* because the federal statute does not criminalize attempt); [United States v. Miller](#), 75 F.4th 215, 229–31 (4th Cir. 2023) (same under the North Carolina statute); [United States v. Davis](#), 75 F.4th 428, 441–45 (4th Cir. 2023) (South Carolina statute); [United States v. Suncar](#), 142 F.4th 259, 266–67 (4th Cir. 2025) (Pennsylvania statute); *452 [United States v. Nelson](#), 151 F.4th 577, 580–82 (4th Cir. 2025) (Virginia statute).

Though Wable was convicted under the same statute at issue in *Campbell*, our holding in *Campbell* does not control with respect to manufacturing offenses. Accordingly, the district court did not plainly err in finding that Wable's conviction for cultivating marijuana qualifies as a controlled substance offense.

B. Nonfrivolous Sentencing Argument

[20] [21] Finally, Wable asserts on appeal that the district court failed to address his nonfrivolous argument for a lesser sentence. Specifically, Wable argued before the sentencing court that his “chemical[] assault[]” by correctional officers at the regional jail warranted a downward departure in his sentence. J.A. 38. This court reviews claims of a district court's failure to address a

nonfrivolous argument under the abuse of discretion standard. [United States v. Lynn](#), 592 F.3d 572, 585 (4th Cir. 2010).

[22] [23] [24] At sentencing, the district court must conduct an individualized assessment of each case. This includes an obligation to “consider the defendant's nonfrivolous arguments for a downward departure[.]” [United States v. Blue](#), 877 F.3d 513, 518 (4th Cir. 2017) (citing [Gall](#), 552 U.S. at 50, 128 S.Ct. 586). In assessing whether the district court has considered the defendant's arguments, we look to the “statements contained in the sentencing record.” [Id.](#) at 521. The adequacy of the district court's explanation “depends on the complexity of each case.” [Id.](#) at 518. There is “no mechanical approach to our sentencing review.” [Id.](#)

On the record before us, we find no abuse of discretion. The district court noted repeatedly that it had taken into account all of Wable's submissions. It opined at length about Wable's various mitigation arguments while weighing the 3553(a) factors. Wable thus cannot overcome the deference owed to the district court.

III. Conclusion

For the reasons above, we affirm Wable's sentence.

AFFIRMED

All Citations

181 F.4th 441

Footnotes

- ¹ In his *pro se* objections to the district court, Wable argued that his 2006 conviction for cultivating marijuana should not qualify as a controlled substance offense for purposes of the Guidelines calculation. On appeal, he raises a new theory. Where a party objected to a Guidelines calculation on the basis of one theory, but on appeal proceeds under a different theory, this court reviews for plain error. [United States v. Lawson](#), 128 F.4th 243, 254 (4th Cir. 2025).

- 2 On appeal, we rely on the Sentencing Guidelines in effect on the date of the defendant's sentencing. See [United States v. Lewis](#), 606 F.3d 193, 198–99 (4th Cir. 2010); see also [U.S.S.G. § 1B1.11\(a\)](#).
- 3 We may take judicial notice of documents not considered by the district court that may not be reasonably disputed and are material to the appeal. [United States v. Fowler](#), 58 F.4th 142, 152 (4th Cir. 2023) (quoting [United States v. Townsend](#), 886 F.3d 441, 444 (4th Cir. 2018)). We do so here, taking notice of the state court records. See [Fed. R. Evid. 201](#).
- 4 The Guidelines were amended in 2023, after Wable was sentenced, to include inchoate offenses as qualifying controlled substance offenses under [U.S.S.G. § 4B1.2](#).

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NO. _____

In the
Supreme Court of the United States

CHARLES RAYMOND WABLE, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

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

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Federal Public Defender

Jonathan D. Byrne
Appellate Counsel
Counsel of Record

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Charleston, West Virginia 25301
304/347-3350
jonathan_byrne@fd.org

Counsel for Petitioner

1 false swearing or for perjury.

2 Do you understand that, sir?

3 THE DEFENDANT: Yes.

4 THE COURT: All right. With that said, if at any
5 time you need to confer with Mr. Delligatti, please let him
6 know or let me know. We'll take a break so you gentlemen can
7 talk.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Mr. Delligatti, sir, have you
11 had a chance to review the PSR?

12 MR. DELLIGATTI: Yes, Your Honor.

13 THE COURT: All right. And have you had a chance to
14 review that with Mr. Wable?

15 MR. DELLIGATTI: Yes, Your Honor.

16 THE COURT: All right. Mr. Wable, sir, have you had
17 a chance to read and review the presentence investigation
18 report that was prepared in anticipation of sentencing in this
19 case?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. And do you believe you've had
22 sufficient time, sir, not only to review that report, but also
23 discuss it fully with Mr. Delligatti as your counsel?

24 THE DEFENDANT: Well, I've never discussed my PSR
25 with Mr. Delligatti. I'd reviewed it on my own.

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1 THE COURT: Okay. Understood. Do you have any
2 questions about any of its contents at this point?

3 THE DEFENDANT: I was -- I made some objections to
4 the PSR. And --

5 THE COURT: Yes, sir. I've received and reviewed
6 those.

7 THE DEFENDANT: And Mr. Delligatti says he didn't
8 want to adopt those. And now I don't understand how I can get
9 this on record. Are they on record, or...

10 THE COURT: They are. They've been filed with the
11 court.

12 THE DEFENDANT: Okay.

13 THE COURT: So they're on record. But I will be
14 candid with you, sir. Because you do have counsel appointed to
15 represent you, legal objections and things of that nature are
16 typically the province of counsel.

17 Your objec- -- your objections have been lodged as part of
18 this court's record, but I do not anticipate speaking about
19 them at great length here today.

20 THE DEFENDANT: Yes.

21 THE COURT: All right.

22 With that, Mr. Delligatti -- and I know we have the pro se
23 objections. Those have been filed. Counsel has indicated that
24 those have not been adopted by counsel of record. Any
25 objections or concerns, Mr. Delligatti, with the PSR we need to

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1 take up on Mr. Wable's behalf today, sir?

2 MR. DELLIGATTI: Your Honor, in terms of the pro se
3 objections -- and as the Court indicated, I did not adopt
4 those -- I think that Mr. Wable is inquiring of the Court
5 whether those objections are preserved for the purposes of
6 appeal, which I don't believe they would be. You know, he's
7 indicated to me that he wants to go forward with sentencing
8 today. And I just wanted to put on the record that those
9 objections wouldn't be preserved for the purposes of appeal.

10 There is one issue that doesn't affect the guideline
11 range; but with respect to his criminal history category, it's
12 an 11 -- or criminal history points --

13 THE COURT: Score.

14 MR. DELLIGATTI: -- of 11. But with the
15 November 1st, 2023, guideline amendments, it would actually
16 be 10.

17 THE COURT: Correct.

18 MR. DELLIGATTI: That wouldn't affect the ultimate
19 guideline range, but I just wanted to put that on the record.

20 THE COURT: No. Understood. And we'll get to that
21 issue.

22 Yes. And, Mr. Wable, I'm sorry if I misunderstood your
23 question. Your objections are part of the record of this court
24 that, in the event of any appeals, that record gets transmitted
25 to the Fourth Circuit Court of Appeals. So those objections

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1 would be part of that record.

2 You do have counsel that's appointed to represent you.
3 There are -- when you have counsel appointed to represent you,
4 there are reasons and procedures in -- there are procedures in
5 place for specific reasons with respect to those objections.
6 Those objections are not on the front line of any appeals. You
7 would have other issues to address with respect to the decision
8 whether to adopt or not adopt those objections. But the
9 objections themselves would not be part of the, if you will,
10 frontline appeal -- front line of issues of appeal given that
11 counsel has not adopted those.

12 Do you understand that, sir?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. Understood.

15 Mr. Delligatti, with that, any objections we need to take
16 up on Mr. Wable's behalf?

17 MR. DELLIGATTI: No, Your Honor.

18 THE COURT: All right. Thank you, sir.

19 Mr. Flower, has the Government had opportunity to review
20 the PSR?

21 MR. FLOWER: Yes, Your Honor.

22 THE COURT: All right. Any objections or concerns
23 from the Government's perspective?

24 MR. FLOWER: No, Your Honor.

25 THE COURT: All right. Without objection, then the

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1 Court will accept and order filed the PSR as drafted. It will
2 be placed in the record under seal. In the event of any
3 appeals, appellate counsel will have access to the sealed PSR,
4 with the exception of the recommendations section. The United
5 States Probation Office's sentencing recommendations remain
6 exclusive to this Court's review and consideration.

7 Mr. Wable was found guilty after trial concluding on
8 April 11th of this year, of 2023. The jury's verdict was
9 that Mr. Wable was guilty on both Counts One and Two. Count
10 One charged Mr. Wable with unlawful possession of a firearm, in
11 violation of 18 U.S.C. 922(g) (1) and 924(a) (2). Count Two
12 charged Mr. Wable with tampering with a witness by corrupt
13 persuasion, in violation of 18 U.S.C. 1512(b) (1). This Court
14 had accepted the jury's verdict and entered judgment on both
15 those counts of guilty.

16 Considering the offenses of conviction, they are grouped
17 for guideline calculation purposes. That is because the
18 offense in Count Two is a -- is an adjustment with respect to
19 the guideline calculation for the offense in Count One. So
20 Counts One and Two are grouped for guideline calculation
21 purposes.

22 Turning to 18 U.S.C. 922(g) (1), which is the statutory
23 basis for the charge in Count One, the guideline that applies
24 and governs that offense of conviction is 2K2.1 and provides
25 for a base offense level here of 26. There are no specific

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1 offense characteristics, no victim-related adjustments, and no
2 adjustments for Mr. Wable's role in the offense conduct.

3 There is a two-level adjustment under 3C1.1 of the
4 guidelines for obstruction of justice, as Mr. Wable willfully
5 obstructed or impeded or attempted to obstruct or impede the
6 administration of justice with respect to the investigation,
7 prosecution, or sentencing of the instant offense of
8 conviction, and the obstructive conduct related to the
9 Defendant's offense of conviction and any relevant conduct.
10 And again, that adds two levels pursuant to 3C1.1. This brings
11 Mr. Wable's adjusted offense level under the guidelines to 28.

12 No Chapter 4 enhancements apply, which results in a total
13 offense level here of 28.

14 As Mr. Delligatti correctly noted, the United States
15 Sentencing Guidelines are set to be amended, effective November
16 of this year, 2023. And this Court has been treating those
17 forthcoming amendments as active currently out of an abundance
18 of fairness for defendants facing sentencing in this court.

19 Mr. Delligatti is correct that Mr. Wable's criminal
20 history points under the amended guidelines would be 10,
21 instead of 11 as recommended in the PSR. However, even with
22 that change, the criminal history category of V remains the
23 same.

24 Considering a total offense level of 28 and criminal
25 history category of V, the guidelines recommend a custody range

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1 of 130 months to 162 months.

2 Because the offenses of conviction are both class C
3 felonies, the guidelines recommend ranges of supervised release
4 of one -- of at least one but not more than three years on each
5 count, and those shall run concurrent to one another.

6 Because the recommended guideline range for custody falls
7 within Zone D of the sentencing table, the guidelines recommend
8 against any sentence of probation in this case.

9 If the Court imposes a fine, the guidelines would
10 recommend a fine range of 25,000 to \$250,000. The Court can
11 take into account the current costs of imprisonment and
12 supervised release in determining the amount of any fine to
13 impose. Imprisonment is currently estimated to cost \$3,688 per
14 month; community confinement, \$2,980 per month; supervised
15 release, \$371 per month.

16 Neither restitution nor forfeiture are -- do not appear to
17 be at issue here.

18 With respect to forfeiture, is the Court's interpretation
19 correct, Mr. Flower?

20 MR. FLOWER: That's correct, Your Honor. No
21 forfeiture allegation was included in this indictment, because
22 the ATF administratively forfeited the firearm and ammunition
23 at issue in this case prior to this case being indicted by the
24 grand jury.

25 THE COURT: All right. Understood. So forfeiture

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NO. _____

In the
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CHARLES RAYMOND WABLE, *Petitioner*,

v.

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

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Counsel for Petitioner

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA

v.

Charles Raymond Wable

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:22CR37

USM Number: 02434-087

Matthew Scott Delligatti

Defendant's Attorney

THE DEFENDANT:☐ pleaded guilty to count(s) _____☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☒ was found guilty on count(s) One and Two
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. §§ 922(g)(1) and 924(a)(2)	Unlawful Possession of a Firearm	09/25/2020	1
18 U.S.C. § 1512(b)(1)	Tampering with a Witness by Corrupt Persuasion	11/10/2020	2

☐ See additional count(s) on page 2The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ is/are dismissed on the motion of the United States.

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

September 22, 2023

Date of Imposition of Judgment



Signature of Judge

Thomas S. Kleeh, Chief United States District Judge

Name and Title of Judge

September 25, 2023

Date

DEFENDANT: Charles Raymond Wable
CASE NUMBER: 1:22CR37

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 180 months; this term consists of 120 months on Count One and 180 months on Count Two, to be served concurrently to one another.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
- ☐ That the defendant be incarcerated at an FCI or a facility as close to _____ as possible;
☐ and at a facility where the defendant can participate in substance abuse treatment, as determined by the Bureau of Prisons;
☐ including the 500-Hour Residential Drug Abuse Treatment Program.
- ☒ That the defendant be incarcerated at an FMC _____ or a facility as close to his/her home in Shinnston, WV _____ as possible;
☒ and at a facility where the defendant can participate in substance abuse treatment, as determined by the Bureau of Prisons;
☒ including the 500-Hour Residential Drug Abuse Treatment Program.
- ☒ That the defendant be given credit for time served since June 6, 2022.
- ☒ That the defendant be allowed to participate in a mental health treatment program as determined appropriate by the Bureau of Prisons.
- ☒ That the defendant be allowed to participate in any educational or vocational opportunities while incarcerated, as determined by the Bureau of Prisons.
- ☒ Pursuant to 42 U.S.C. § 14135A, the defendant shall submit to DNA collection while incarcerated in the Bureau of Prisons, or at the direction of the Probation Officer.
- ☒ 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 12:00 pm (noon) on _____ .
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.
☐ on _____, as directed by the United States Marshals Service.
- ☐

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: Charles Raymond Wable

CASE NUMBER: 1:22CR37

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: 3 years on each of Counts One and Two, both such terms to run 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 in its November 29, 2016, Standing Order, as well as with any other conditions on the attached page (if applicable).

DEFENDANT: Charles Raymond Wable
CASE NUMBER: 1:22CR37Judgment—Page 4 of 7**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 shall not commit another federal, state or local crime.
4. You shall not unlawfully possess a controlled substance. You shall refrain from any unlawful use of a controlled substance. You 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 probation officer.
5. 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.
6. You must answer truthfully the questions asked by your probation officer.
7. 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.
8. 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.
9. 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.
10. 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.
11. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
12. 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).
13. 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.
14. 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.
15. You shall not purchase, possess or consume any organic or synthetic intoxicants, including bath salts, synthetic cannabinoids or other designer stimulants.
16. You shall not frequent places that sell or distribute synthetic cannabinoids or other designer stimulants.
17. Upon reasonable suspicion by the probation officer, you shall submit your person, property, house, residence, vehicle, papers, computers, or other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition.
18. You are prohibited from possessing a potentially vicious or dangerous animal or residing with anyone who possesses a potentially vicious or dangerous animal. The probation officer has sole authority to determine what animals are considered to be potentially vicious or dangerous.
19. 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 _____

DEFENDANT: Charles Raymond Wable

CASE NUMBER: 1:22CR37

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a substance abuse treatment program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).
2. You must not use or possess any controlled substances without a valid prescription. If you do have a valid prescription, you must disclose that prescription information immediately to your supervising probation officer. You must also very carefully follow all instructions that come with any prescription medication dispensed to you, and that includes dosages or how frequently or often you are instructed to take those dosages.
3. You must submit to substance abuse testing to determine if you have used a prohibited substance. You must not attempt to obstruct or tamper with the testing methods.
4. You must not go to, or remain at, any place where you know controlled substances are illegally sold, used, distributed, or administered without first obtaining the permission of the probation officer.
5. You must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).
6. If you are prescribed medication through your mental health treatment program, you must disclose the prescription information immediately to your supervising probation officer and you must also very carefully follow the instructions on the prescription to include dosages and how frequently or often you are instructed to take those dosages.

DEFENDANT: Charles Raymond Wable
CASE NUMBER: 1:22CR37

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	\$	\$	\$	\$

☐ 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.

The victim's recovery is limited to the amount of their loss and the defendant's liability for restitution ceases if and when the victim receives full restitution.

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

TOTALS \$ _____ \$ _____

- ☐ See Statement of Reasons for Victim Information
- ☐ 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.

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DEFENDANT: Charles Raymond Wable

CASE NUMBER: 1:22CR37

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 \$ 200 due immediately, balance due

☐ not later than _____, or
☒ in accordance with ☐ C ☐ D, ☐ E, ☒ F, or ☐ G below; or
- B

☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, ☐ F, or ☐ G 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:

Financial obligations ordered are to be paid while the defendant is incarcerated, and if payment is not completed during incarceration, it is to be completed by the end of the term of supervised release; or
- G

☐ Special instructions regarding the payment of criminal monetary penalties:

The defendant shall immediately begin making restitution and/or fine payments of \$ _____ per month, due on the first of each month. These payments shall be made during incarceration, and if necessary, during supervised release.

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 Clerk, U. S. District Court, Northern District of West Virginia, P.O. Box 1518, Elkins, WV 26241.

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

☐ Joint and Several

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