

APPENDIX A

183 F.4th 416
United States Court of Appeals, Fifth Circuit.

UNITED STATES of America, Plaintiff—
Appellee,
v.
Munson P. HUNTER, III, Defendant—
Appellant.

No. 24-20211
|
Summary Calendar
|
FILED July 29, 2026

Synopsis

Background: Defendant pled guilty in the United States District Court for the Southern District of Texas, [Sim T. Lake, III, J.](#), to aiding and abetting wire fraud, and he appealed. The Court of Appeals, [2024 WL 5003582](#), dismissed. Certiorari was granted. The United States Supreme Court, Justice Kagan, [146 S.Ct. 1702](#), vacated and remanded.

[Holding:] On remand, the Court of Appeals, [Davis](#), Circuit Judge, held that special condition of supervised release requiring defendant to take all mental health medication his physician might prescribe was not blatant constitutional error rendering appeal waiver unenforceable.

Appeal dismissed.

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

West Headnotes (5)

[1] **Criminal Law**🔑Plea of Guilty or Nolo Contendere

Appeal waiver in written plea agreement is unenforceable when it would result in miscarriage of justice, meaning when it would

leave in place kind of egregious error that would bring judicial system into disrepute.

[1 Case that cites this headnote](#)

[2] **Criminal Law**🔑Plea of Guilty or Nolo Contendere

For appeal waiver in plea agreement to constitute miscarriage of justice making waiver unenforceable, error must be obvious—not one that judge could reasonably make.

[5 Cases that cite this headnote](#)

[3] **Criminal Law**🔑Waiver or Loss of Right

Point of miscarriage-of-justice limit for waiver of appeal is to offer safety valve for extreme cases, a way out of waiver when system's integrity is at stake.

[1 Case that cites this headnote](#)

[4] **Criminal Law**🔑Waiver or Loss of Right

Standard-fare errors in misapplying sentencing law cannot cancel appeal waiver.

[2 Cases that cite this headnote](#)

[5] **Criminal Law**🔑Plea of Guilty or Nolo Contendere

District court's imposition of special condition

of supervised release requiring defendant convicted of aiding and abetting wire fraud to participate in mental health program and take all mental health medication his physician might prescribe was not blatant constitutional error such as to result in miscarriage of justice, and thus appeal waiver in his plea agreement was not rendered unenforceable by special condition, notwithstanding his significant liberty interest in avoiding unwanted medication; there was no precedent addressing constitutional standard for requiring defendant to take medication as condition of supervised release, and there was nexus between condition and government's interests in promoting defendant's health and reducing his likelihood of re-offending. 18 U.S.C.A. § 3583(d).

1 Case that cites this headnote

Appeal from the United States District Court for the Southern District of Texas, USDC No. 4:23-CR-85-1, [Sim T. Lake, III](#), U.S. District Judge

Attorneys and Law Firms

[Amy Howell Alaniz](#), [Carmen Castillo Mitchell](#), Assistant U.S. Attorneys, U.S. Attorney's Office, Houston, TX, for Plaintiff—Appellee.

[Brent Evan Newton](#), I, Gaithersburg, MD, for Defendant—Appellant.

Before [Davis](#), [Smith](#), and [Higginson](#), Circuit Judges.

Opinion

[W. Eugene Davis](#), Circuit Judge:

*417 This case comes before us on remand from the Supreme Court. Defendant-Appellant Munson Hunter pled guilty of wire fraud pursuant to a plea agreement that included a waiver of his appeal rights. The district court then sentenced Hunter to a term of supervised release and included a special condition requiring him to participate in a mental health program and take all mental health medication his physician might prescribe. Hunter appealed the condition that he take recommended medication, and we enforced his appeal waiver. The

Supreme Court granted certiorari and announced a new standard limiting appeal waivers: they are ineffective if enforcement would result in a “miscarriage of justice.” Applying this standard, we conclude that Hunter effectively waived his right to appeal the challenged condition of supervised release and therefore DISMISS this appeal.

I.

Hunter was indicted on ten counts of bank and wire fraud stemming from a scheme that resulted in a loss of about half a million dollars to various financial institutions. He thereafter asked the court to “order independent competency and insanity evaluations.” The request noted that “Defense counsel’s most recent interactions with defendant have raised concerns about his competency” and “these concerns have also been amplified based on recent conversations and information received from Defendant’s ex-wife regarding Defendant’s behavior.”

Although the court granted Hunter’s request for an evaluation, no further competency concerns arose. A few months later, Hunter pleaded guilty to one count of aiding and abetting wire fraud in return for the Government’s dismissal of the nine other charges. His plea agreement contained an appeal waiver providing that Hunter “knowingly and voluntarily waive[d] the right to appeal” his “conviction and sentence,” except to raise ineffective assistance of counsel.

The Probation Office then prepared a Presentence Report. The Report provided that Hunter endured a traumatic childhood: his father murdered his mother and grandmother in front of him when he was nine years old. Thereafter, he lived with his uncle, who was physically abusive. At age 10, Hunter was diagnosed with anxiety and depression. He was then sexually assaulted at 14, which understandably worsened his mental health. But the Report noted Hunter “refused medication to treat his symptoms.” The Probation Office recommended that, as a condition of supervised release, Hunter “participate in a mental-health treatment program and follow the rules and regulations of the program.” The proposed condition further included the requirement at the center of this case: that Hunter “take all mental health medications that are prescribed by [his] treating physician” (the “Medication Condition”).

The court held a sentencing hearing. There, Hunter described some of the unfortunate details of his childhood and their effect on his mental health. He also blamed his

criminal activity in part on the government for mistreating his father during and after his father's military service. Defense counsel similarly explained Hunter had a "very traumatic ... childhood and upbringing" that "helps give context and explains why he's here."

Hunter objected to the Medication Condition at the sentencing hearing. Although he "want[ed] to take mental health programs," he did not "want to be forced to medicate" because he didn't drink, curse, or use drugs. The court responded:

***418** Well, if you're going to participate in mental health treatment and the treatment provider prescribes drugs, you should take them. If there's a dispute, you can address it to the probation officer. If the probation officer can't resolve the dispute, you can address it to me.

The court then sentenced Hunter to 51 months' imprisonment and a supervised release term of three years. The court included the Medication Condition as a requirement of supervised release.

Despite the appellate waiver in his plea agreement, Hunter appealed his sentence. He contended the Medication Condition was "not supported by the record" and thus infringed on his "fundamental due process liberty interest in being free of unwanted mental health medication."

We dismissed Hunter's appeal. At the time, this circuit "recognized only two exceptions to the general rule" that appellate waivers are enforceable: "first, ineffective assistance of counsel, and second, a sentence exceeding the statutory maximum."¹ Because Hunter's arguments did not fit within either of these exceptions, we enforced his appellate waiver.

II.

[¹] [²] [³]The Supreme Court granted certiorari in this case and announced a new standard governing appeal waivers. A waiver is now "unenforceable when it would result in a miscarriage of justice—meaning, when it would leave in place the kind of egregious error that would bring the judicial system into disrepute."² "The error must be obvious—not one a judge could reasonably make."³ This test, "properly understood and applied, sets a high bar" although not an "insurmountable one."⁴ Overall, "[t]he point of the miscarriage-of-justice limit ... is to offer a safety valve for extreme cases—a way out of waiver when the system's integrity is at stake."⁵

[⁴]The Court further explained the types of situations that would qualify for the miscarriage-of-justice exception:

First, a defendant may appeal a sentence exceeding what the relevant statute allows—most commonly, a term of years above the maximum prescribed. Second, a defendant may appeal a sentence infected with a blatant constitutional error, such as when a judge takes account of a constitutionally impermissible factor (like race) or imposes a constitutionally infirm condition of supervised release (like barring a defendant from becoming pregnant). And third, a defendant may appeal if his sentence was imposed without some minimum of civilized procedure, as in, yes, the [trial by] twelve orangutans case—or less extravagantly, one in which the judge refused to hold a hearing consonant with basic principles of law.⁶

But the Court opined that other, more "uncertain or ordinary" errors would not override an appeal waiver.⁷ It observed that "mistakes" in "the detailed calculation of a Sentencing Guidelines range and the mandatory consideration of multiple sentencing factors" are "unfortunate but inevitable." ***419** ⁸ "Such standard-fare errors in misapplying sentencing law cannot cancel an appeal waiver."⁹

After announcing the miscarriage-of-justice standard, the Court declined to apply the test to Hunter's case in the first instance.¹⁰ Instead, it remanded to this court to apply this standard to the record facts of this case.¹¹ We ordered supplemental briefs addressing the Supreme Court's opinion.

III.

Hunter contends the district court's imposition of the Medication Condition constituted both (1) "blatant" constitutional error and (2) "obvious" statutory error. We take each argument in turn, ultimately concluding that the district court committed no "egregious" error that would result in a "miscarriage of justice" or "bring the judicial system into disrepute."¹²

A. Constitutional Error

Hunter argues first that the district court's imposition of the Medication Condition amounts to "blatant constitutional error."¹³ He contends that substantive due process principles give rise to a fundamental right to

refuse unwanted medication. This right, Hunter argues, means he cannot be forced to take medication unless such compulsion is narrowly tailored to achieve a compelling government interest. And in his view, such tailored findings are absent from this record, which renders the Medication Condition *blatantly* unconstitutional.

But much of Hunter's support for this argument comes from a blend of language from out-of-circuit case law.¹⁴ The only binding precedent he invokes are Supreme Court cases arising from two related but distinguishable contexts.

First, in *Washington v. Harper*, the Court considered whether the government could forcibly medicate an inmate to ensure "prison safety and security."¹⁵ The Court observed there was "no doubt" that prisoners possess "a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment."¹⁶ However, it explained "the extent of a prisoner's right under the Clause ... must be defined in the context of the inmate's confinement."¹⁷ Accordingly, the Court held that for an inmate to be forcibly medicated, the regulation must be "reasonably related to legitimate penological interests" considering the "valid, rational connection" between the regulation and the government's interests, the impact *420 on other prison personnel and resources, and the "absence of ready alternatives."¹⁸

Second, in *Sell v. United States*, the Court considered the circumstances under which the government could medicate a pre-trial detainee to render him competent to stand trial.¹⁹ The Court set out a stricter test for this context, holding that involuntary administration was permissible "only if the treatment is medically appropriate, is substantially unlikely to have side effects that may undermine the fairness of the trial, and, taking account of less intrusive alternatives, is necessary significantly to further important governmental trial-related interests."²⁰

Crucially however, neither the Supreme Court nor this court has addressed the constitutional standard for requiring a defendant to take medication as a condition of supervised release, which presents unique considerations. First, Hunter has different rights than the groups addressed in *Sell* and *Harper*. Unlike the pretrial detainees in *Sell*, Hunter has been convicted of a crime and is still serving his criminal sentence.²¹ Releasees like Hunter therefore "do not enjoy the full panoply of rights guaranteed by our Constitution" despite being released from prison.²² Second, the government's interests in the supervised release context also differ. Rather than obtaining a conviction (as in *Sell*), or ensuring prison

safety (as in *Harper*), the government's goals in imposing supervised release conditions include reducing recidivism, protecting the public from further crimes, and promoting Hunter's health and re-integration into the community.²³

The paucity of authorities on the challenge Hunter makes in this case is a substantial strike against his assertion that the district court committed "blatant" constitutional error. As a general matter, an error is clear or obvious only if it is apparent under controlling law and does not require an extension of precedent.²⁴ This makes sense: obvious error is both easier to identify and more likely to exist where a court has failed to abide by a controlling constitutional standard.

¹⁵Regardless, we know from *Harper* and *Sell* that a releasee has a "significant liberty interest" in avoiding unwanted *421 medication.²⁵ But when we balance this interest against the government's interests in protecting the public and promoting Hunter's health and resumption of community life, we have no difficulty in concluding that the district court's imposition of the Medication Condition was not "blatant constitutional error" such as to result in a miscarriage of justice.

First, there is a nexus between the Medication Condition and the government's interests in promoting Hunter's health and reducing his likelihood of re-offending. The Presentence Report explains that Hunter experienced physical abuse, sexual assault, and the tragic murder of his family members, resulting in anxiety and depression. Hunter and his counsel both invoked this background to explain his crimes at his sentencing hearing. And the Medication Condition was imposed as part of a broader requirement that Hunter participate in a mental health treatment program and abide by the rules of that program. Hunter himself advised that he "always wanted to get help" and "want[ed] to take mental health programs." Thus, this is not a situation where the Medication Condition is untethered from the record or from the government's interests.

Second, the district court provided a mechanism for Hunter to further litigate his objections *if* medication is prescribed in the future.²⁶ It advised that if a "dispute" arose about Hunter's taking particular medication, and "the probation officer can't resolve the dispute," Hunter could "address" his challenge to the court. A "modifiable condition" such as this "works a less significant deprivation of liberty than one which cannot be altered."²⁷ "[A] defendant faces an uphill battle when he seeks to convince us that a modifiable condition seriously affects the fairness, integrity or public reputation of judicial proceedings."²⁸ This is especially true here: the Medication Condition can be more effectively considered

in light of concrete facts that may occur during Hunter's term of supervised release.

Third, Hunter will only be required to take medication as prescribed by a physician, which militates against unconstitutionality.²⁹ For example, the *Harper* Court refused to "assume that physicians will prescribe these drugs for reasons unrelated to the medical needs of the patients; indeed, the ethics of the medical profession are to the contrary."³⁰ Likewise, we refuse to assume that Hunter's physician would prescribe mental health medication against Hunter's medical interest.

Fourth, the prevalence of the Medication Condition suggests its imposition does not ***422** rise to the level of "egregious" constitutional error that would "bring the judicial system into disrepute."³¹ This exact condition has been "broadly imposed" by federal district courts "as a 'stock' special condition" of supervised release.³² As of the date of this opinion, the Medication Condition is included in the template for special supervised release conditions posted on the federal courts' publicly accessible website as a resource for courts and probation offices nationwide.³³ More specifically, the district court that sentenced Hunter included the Medication Condition as a proposed special condition in its "General Order" on supervised release conditions.³⁴ Although pervasiveness does not equate to constitutionality, the widespread imposition of this exact condition is strong evidence that this is not an "extreme case" of the kind the Supreme Court contemplated would vitiate an appeal waiver.

Finally, we observe that the Medication Condition imposed here bears no resemblance to the two examples of "blatantly unconstitutional" practices given by the Supreme Court: considering race in sentencing or prohibiting a supervised releasee from becoming pregnant.³⁵ Those errors stem from extreme animus or prejudice, which are *never* appropriate considerations in sentencing.³⁶ In contrast, there is no suggestion here that the district court imposed the Medication Condition for such invidious purposes.³⁷

For these reasons, we find the district court's imposition of the Medication Condition did not amount to blatant constitutional error giving rise to a miscarriage of justice.

B. Statutory Error

Hunter next argues that the district court's imposition of the Medication Condition egregiously exceeded the bounds of 18 U.S.C. § 3583(d). That statute requires that

supervised release conditions "involve[] no greater deprivation of liberty than is reasonably necessary" to "afford adequate deterrence to criminal conduct"; "protect the public from further crimes of the defendant"; and "provide the defendant with needed educational or vocational training, medical care, or other corrective ***423** treatment in the most effective manner."³⁸

Hunter's argument is unavailing. The Supreme Court certainly left open the possibility that *some* statutory sentencing errors—"most commonly a term of years above" a numerical statutory maximum—could be "egregious" enough to override an appeal waiver.³⁹ But it also emphasized that "standard-fare errors in misapplying sentencing law" and in the "mandatory consideration of multiple sentencing factors" are "unfortunate but inevitable" and therefore "cannot cancel an appeal waiver."⁴⁰ Hunter's appeal, if anything, presents such a "standard-fare," non-obvious sentencing error because, as discussed above, there is a clear nexus between Hunter's mental health history and the Medication Condition.

Hunter cites two cases in which we found the imposition of mental health supervised release conditions amounted to "obvious" statutory error. But in those cases, there was practically no record support for the conditions. In *United States v. Gordon*, we found a mental health treatment condition constituted plain error where there was a complete "absence of *any* record evidence indicating that [the releasee] has a questionable mental health history or a particular diagnosis requiring mental health treatment."⁴¹ Similarly, in *United States v. Bree*, we reversed the imposition of a medication condition where the defendant had never been "diagnosed with a mental disorder" and the only indication of his mental health struggles was a "suicide attempt 40 years before" his sentencing.⁴²

But where there is record support for a condition—even somewhat tenuous record support—we have found no "obvious" § 3583 error. For example, in *United States v. Rocha*, the district court imposed mental health and medication conditions on a defendant who had never been diagnosed with a mental health disorder. We nevertheless found no plain error because the defendant had a "violent" criminal history and his wife had "expressed concern that he was bipolar due to a history in his family."⁴³

Here, there is more record support for the Medication Condition than in *Gordon*, *Bree*, or even *Rocha*. Hunter (1) presently struggles with his mental health, (2) has been diagnosed with mental health conditions, (3) affirmatively requested mental health treatment, and (4) implicated his mental health struggles as a cause of his criminal activity. For these reasons—as well as those

identified above in relation to Hunter’s constitutional arguments—there was no “obvious” error in the district court’s determination that requiring Hunter to take prescribed mental health medication “involve[s] no greater deprivation of liberty than is reasonably necessary” to “protect the public from further crimes” and to provide Hunter with “needed ... medical care ... in the most effective manner.”⁴⁴

For these reasons, we find no miscarriage of justice would result from enforcing Hunter’s appeal waiver. Because Hunter ***424** effectively waived his right to appeal the imposition of the Medication Condition, we enforce his waiver and DISMISS this appeal.

All Citations

183 F.4th 416

IV.

Footnotes

¹ [United States v. Barnes](#), 953 F.3d 383, 389 (5th Cir. 2020) (cleaned up).

² [Hunter v. United States](#), — U.S. —, 146 S. Ct. 1702, 1708, — L.Ed.2d — (2026).

³ [Id.](#) at 1713.

⁴ [Id.](#)

⁵ [Id.](#) at 1713–14.

⁶ [Id.](#) at 1714 (internal quotation marks and citations omitted).

⁷ [Id.](#)

⁸ [Id.](#)

⁹ [Id.](#)

¹⁰ [Id.](#) at 1715.

¹¹ [Id.](#)

¹² [Id.](#) at 1708.

13 *Id.* at 1714.

14 For example, he draws on a passing statement from a Sixth Circuit case for the proposition that the right not to take unwanted medication is “fundamental.” See *United States v. Grigsby*, 712 F.3d 964, 976 (6th Cir. 2013). And he cites cases from the Sixth, Ninth, and Tenth Circuits establishing constitutional standards for requiring releasees to take medication. See *United States v. Krueger*, 815 F. App’x 847, 855 (6th Cir. 2020); *United States v. Malone*, 937 F.3d 1325, 1327 (10th Cir. 2019); *United States v. Williams*, 356 F.3d 1045, 1057 (9th Cir. 2004).

15 *Washington v. Harper*, 494 U.S. 210, 223, 110 S.Ct. 1028, 108 L.Ed.2d 178 (1990).

16 *Id.* at 221–22, 110 S.Ct. 1028.

17 *Id.* at 222, 110 S.Ct. 1028.

18 *Id.* at 223–25, 110 S.Ct. 1028.

19 539 U.S. 166, 180, 123 S.Ct. 2174, 156 L.Ed.2d 197 (2003).

20 *Id.* at 179, 123 S.Ct. 2174.

21 See *Mont v. United States*, 587 U.S. 514, 524, 139 S.Ct. 1826, 204 L.Ed.2d 94 (2019) (“Supervised release is a form of punishment that Congress prescribes along with a term of imprisonment as part of the same sentence.”).

22 *United States v. Giglio*, 126 F.4th 1039, 1045 (5th Cir. 2025) (holding supervised releasees can be categorically deprived of Second Amendment rights); see also *Samson v. California*, 547 U.S. 843, 850, 126 S.Ct. 2193, 165 L.Ed.2d 250 (2006) (holding that parolees can be subject to suspicionless searches without offending the Fourth Amendment because they “have severely diminished expectations of privacy by virtue of their status alone.”).

23 See *id.*; *United States v. Johnson*, 529 U.S. 53, 59, 120 S.Ct. 1114, 146 L.Ed.2d 39 (2000).

24 See *United States v. Evans*, 587 F.3d 667, 671 (5th Cir. 2009) (observing, in the plain-error context, that “[w]e ordinarily do not find plain error when we have not previously addressed an issue. Even where the argument requires only extending authoritative precedent, the failure of the district court to do so cannot be plain error.” (internal citations and quotation marks omitted)); *Wright v. Van Patten*, 552 U.S. 120, 126, 128 S.Ct. 743, 169 L.Ed.2d 583 (2008) (holding a state court did not violate “clearly established Federal law,” as necessary for the petitioner to obtain relief under 28 U.S.C. § 2254, “[b]ecause our cases give no clear answer to the question presented.” (internal quotation marks omitted)).

25 *Harper*, 494 U.S. at 221, 110 S.Ct. 1028.

26 We briefly note that the Government raises ripeness in its brief. Indeed, we held in *United States v. Ellis* that a challenge to a Medication Condition was not ripe for review because it was uncertain that the defendant would be prescribed medication once he began supervised release at the conclusion of his ten-year custodial sentence. 720 F.3d 220, 227 (5th Cir. 2013). However, we will not dismiss the instant appeal on ripeness grounds. The Supreme Court reached the merits of this case, and its mandate charged us with “decid[ing] whether enforcing Hunter’s appeal waiver would result in a miscarriage of justice.” *Hunter*, 146 S. Ct. at 1715. We therefore interpret the Supreme Court’s opinion as precluding a dismissal on justiciability grounds.

27 *United States v. Fields*, 777 F.3d 799, 806 (5th Cir. 2015).

28 *United States v. Prieto*, 801 F.3d 547, 554 (5th Cir. 2015) (cleaned up).

29 See *Harper*, 494 U.S. at 226, 110 S.Ct. 1028 (“The drugs may be administered for no purpose other than treatment, and only under the direction of a licensed psychiatrist.”).

30 *Id.* at 222 n.8, 110 S.Ct. 1028.

31 *Hunter*, 146 S. Ct. at 1708.

32 See *United States v. Malone*, 937 F.3d 1325, 1328 (10th Cir. 2019) (“[B]oth parties recognized that [the medication] condition is currently being broadly imposed as a ‘stock’ special condition.”)

33 *Overview of Probation and Supervised Release Conditions, Chapter 3: Mental Health Treatment (Probation and Supervised Release Condition)*, United States Courts, [https://perma.cc/PX6N-WNDR] (last visited July 24, 2026).

34 S.D. Tex. Gen. Order No. 2017-10 (Jan 6, 2017).

35 *Hunter*, 146 S. Ct. at 1715.

36 For the pregnancy-prohibition example, the Supreme Court cited to *People v. Zaring*, 8 Cal. App. 4th 362, 374, 10 Cal.Rptr.2d 263 (1992). There, the sentencing court reasoned that the probationer should not have any more children because she was on public assistance. *Id.* The appellate court reversed, noting this “imposition of personal social values” was “disturbing” and “inappropriate.” *Id.* at 374–75, 10 Cal.Rptr.2d 263.

- 37 Indeed, the Sixth Circuit sets stringent constitutional standards for requiring releasees to take medication. See *Krueger*, 815 F. App'x at 855. But that Court nevertheless refused to overturn a Medication Condition on miscarriage-of-justice review because the condition simply “does not involve the same fundamental unfairness as a sentence that is based on racial discrimination.” *United States v. Rush*, No. 23-5533, 2024 WL 5689727, at *2 (6th Cir. Dec. 9, 2024) (unpublished), *cert. denied*, — U.S. —, 145 S. Ct. 2787, 222 L.Ed.2d 1080 (2025).
- 38 18 U.S.C. §§ 3583(d), 3553(a)(2)(B), (C), and (D).
- 39 *Hunter*, 146 S. Ct. at 1714 (emphasis added).
- 40 *Id.* at 1713.
- 41 838 F.3d 597, 604 (5th Cir. 2016) (emphasis added).
- 42 927 F.3d 856, 861 (5th Cir. 2019).
- 43 732 F. App'x 291, 296 (5th Cir. 2018).
- 44 18 U.S.C. § 3583(d).

APPENDIX B



KeyCite Red Flag

Vacated and Remanded by [Hunter v. United States](#), U.S., June 18, 2026

2024 WL 5003582

Only the Westlaw citation is currently available.
United States Court of Appeals, Fifth Circuit.

UNITED STATES of America,
Plaintiff—Appellee,
v.
Munson P. HUNTER, III,
Defendant—Appellant.

No. 24-20211

|
Summary Calendar

|
FILED December 6, 2024

Appeal from the United States District Court for the
Southern District of Texas, USDC No. 4:23-CR-85-1

Attorneys and Law Firms

[Amy Howell Alaniz](#), [Carmen Castillo Mitchell](#), Assistant
U.S. Attorneys, U.S. Attorney's Office, Houston, TX, for
Plaintiff—Appellee.

[Brent Evan Newton](#), I, Gaithersburg, MD, for
Defendant—Appellant.

Before Davis, Smith, and [Higginson](#), Circuit Judges.

Opinion

Per Curiam:*

*1 Munson P. Hunter, III pleaded guilty to wire fraud affecting a financial institution. The district court sentenced him to 51 months in prison and three years of supervised release.

On appeal, Hunter argues that the condition of supervised release requiring him to take mental health medication prescribed by his physician is not supported by the record and infringes on his fundamental due process liberty interest. Hunter also claims that the written condition is more burdensome than and conflicts with the oral pronouncement in that it fails to specify that the court may intervene to resolve any dispute between Hunter and the probation officer regarding the medication. The

Government invokes the appeal waiver in the plea agreement, asserting that these claims are barred by the waiver.

We apply de novo review when considering whether an appeal waiver bars an appeal. [United States v. Keele](#), 755 F.3d 752, 754 (5th Cir. 2014). In this case, the appeal waiver bars Hunter's appeal of the medication condition and the purported conflict between the oral pronouncement and the written judgment as to that condition. See [United States v. Higgins](#), 739 F.3d 733, 738-39 (5th Cir. 2014); see also *id.* at 739 (observing that oral and written sentences "may differ in content if they do not conflict but one merely addresses ambiguities in the other").

Contrary to Hunter's assertions, the district court's statement at the sentencing hearing that Hunter had a right to appeal did not impact the validity of the appeal waiver. See [United States v. Gonzalez](#), 259 F.3d 355, 358 (5th Cir. 2001). We have also rejected Hunter's suggestion that the right to challenge an unconstitutional sentence cannot be waived. See [United States v. Barnes](#), 953 F.3d 383, 389 (5th Cir. 2020).

Hunter further contends that the district court erred by including the reference to aiding and abetting in the written judgment's description of the offense of conviction. As the Government notes, this court has remanded for correction of a clerical error in a written judgment notwithstanding an enforceable appeal waiver. See [Higgins](#), 739 F.3d at 739 n.16); [United States v. Rosales](#), 448 Fed. App'x 466, 466-67 (5th Cir. 2011). Here, Hunter pleaded guilty to Count 5 of the superseding indictment, which charged him with committing wire fraud affecting a financial institution in violation of 18 U.S.C. § 1343 and the aiding and abetting statute at 18 U.S.C. § 2. Because the judgment therefore accurately reflects the offense that Hunter was indicted for and in fact pleaded guilty to, there is no clerical error and the judgment does not need to be corrected. See [United States v. Cooper](#), 979 F.3d 1084, 1089 (5th Cir. 2020).

As to Hunter's arguments pertaining to the medication condition, the appeal is DISMISSED. As to Hunter's argument pertaining to the judgment's reference to aiding and abetting, the judgment is AFFIRMED.

All Citations

Not Reported in Fed. Rptr., 2024 WL 5003582

Footnotes

- * This opinion is not designated for publication. See 5th Cir. R. 47.5.

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APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
Holding Session in Houston**ENTERED**

May 13, 2024

Nathan Ochsner, Clerk

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

MUNSON P. HUNTER, III**CASE NUMBER: 4:23CR00085-001****USM NUMBER: 48809-053**Brandon Gerrard Leonard

Defendant's Attorney

THE DEFENDANT:

- ☒ pleaded guilty to count(s) 5S on February 14, 2024.
- ☐ pleaded nolo contendere to count(s)
which was accepted by the court.
- ☐ was found guilty on count(s)
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 1343 and 2	Aiding and abetting wire fraud affecting a financial institution	06/23/2015	5S

- ☐ See Additional Counts of Conviction.

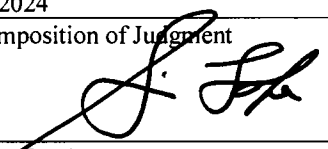
The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☒ Count(s) remaining 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.

May 10, 2024

Date of Imposition of Judgment


 Signature of Judge
SIM LAKE**SENIOR UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

May 13, 2024

Date

DEFENDANT: **MUNSON P. HUNTER, III**
CASE NUMBER: **4:23CR00085-001**

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 51 months.

This term consists of FIFTY-ONE (51) MONTHS as to Count 5S.

- ☐ See Additional Imprisonment Terms.
- ☐ The court makes the following recommendations to the Bureau of Prisons:
- ☒ 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 _____ on _____
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on _____
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

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

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **MUNSON P. HUNTER, III**
CASE NUMBER: **4:23CR00085-001**

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: 3 years.

This term consists of THREE (3) YEARS as to Count 5S.

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.

STANDARD CONDITIONS OF SUPERVISION

- ☒ See Special 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.
14. If restitution is ordered, the defendant must make restitution as ordered by the Judge and in accordance with the applicable provisions of 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663A and/or 3664. The defendant must also pay the assessment imposed in accordance with 18 U.S.C. § 3013.
15. The defendant must notify the U.S. Probation Office of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

DEFENDANT: **MUNSON P. HUNTER, III**
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SPECIAL CONDITIONS OF SUPERVISION

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, including the provider, location, modality, duration, and intensity. You must pay the cost of the program, if financially able.

You must take all mental-health medications that are prescribed by your treating physician. You must pay the costs of the medication, if financially able.

You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.

You must not incur new credit charges or open additional lines of credit without the approval of the probation officer.

DEFENDANT: **MUNSON P. HUNTER, III**
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CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment¹</u>	<u>JVTA Assessment²</u>
TOTALS	\$100	\$235,438.83	\$	\$	\$

- ☐ See Additional Terms for Criminal Monetary Penalties.
- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- ☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss³</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Capital One Bank		\$105,595.06	
Chase Bank		\$57,343.77	
Small Business Administration		\$72,500	

- ☐ See Additional Restitution Payees.

TOTALS	\$	<u>\$235,438.83</u>
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- ☐ Restitution amount ordered pursuant to plea agreement \$_____
- ☒ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:
- ☐ Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

¹ Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

² Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

³ Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: **MUNSON P. HUNTER, III**
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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_____ installments of \$_____ over a period of _____,
to commence_____ after the date of this judgment; or
- D ☐ Payment in equal_____ installments of \$_____ over a period of _____,
to commence_____ after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within_____ 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:

Payable to: Clerk, U.S. District Court, Attn: Finance, P.O. Box 61010, Houston, TX 77208

Balance due in payments of the greater of \$25 per quarter or 50% of any wages earned while in prison in accordance with the Bureau of Prisons' Inmate Financial Responsibility Program.

Any balance remaining after release from imprisonment shall be paid in monthly installments of \$200 to commence 60 days after the date of release to a term of supervision.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

☐ Joint and Several

Case Number

Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
Amount

Corresponding Payee,
if appropriate

- ☐ See Additional Defendants and Co-Defendants Held Joint and Several.
- ☐ 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) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.