

**NONPRECEDENTIAL DISPOSITION**

To be cited only in accordance with FED. R. APP. P. 32.1

**United States Court of Appeals**

**For the Seventh Circuit**

**Chicago, Illinois 60604**

Argued October 3, 2023

Decided November 13, 2023

**Before**

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-3155

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

*v.*

BRANDON ELLIS,  
*Defendant-Appellant.*

Appeal from the United States District  
Court for the Northern District of Illinois,  
Eastern Division.

No. 1:22-CR-00294(1)

Ronald A. Guzmán,  
*Judge.*

**ORDER**

Brandon Ellis pleaded guilty to one count of possessing a firearm as a felon, *see* 18 U.S.C. § 922(g), and the district court sentenced him to an above-guidelines sentence of 84 months in prison. On appeal, Ellis argues that the district court violated his right to be sentenced based on accurate information when it characterized his gun-possession offense as a “violent crime.” Because Ellis has not shown that, in context, the court based his sentence on inaccurate information, we affirm.

## I.

This appeal arises from Ellis's arrest in August 2021, after a police surveillance camera caught him displaying what appeared to be a gun in a public area. When police officers came to the scene, Ellis began to flee from them. The officers chased and tackled him, and found in his waistband a loaded handgun, which they later discovered was stolen. At the time, Ellis was on supervised release for an earlier felon-in-possession conviction.

Ellis pleaded guilty to one count of possessing a firearm as a felon, *see* 18 U.S.C. § 922(g)(1), and a presentence investigation report was prepared with a guidelines range of 24 to 30 months. The PSR stated Ellis had two prior convictions for unlawfully possessing firearms: one for possessing a firearm as a felon, and another for possessing a firearm with a defaced serial number in violation of Illinois law. According to the PSR, Ellis fled from police officers before the arrest that led to one of the earlier convictions.

At the sentencing hearing the district court confirmed neither party objected to the PSR, which the court adopted. The government argued that Ellis should receive a 30-month sentence, the top of the guidelines range. The government noted his conduct (possessing a loaded gun and fleeing) created a serious danger. And Ellis had two prior convictions for illegally possessing a firearm (one of which involved several guns), which the government also emphasized. Because Ellis had "already been sentenced on two separate occasions for possession of a weapon," (for 24 months and 36 months, respectively, the latter sentence in the case involving several weapons), the district court thought that a new 30-month term might not be sufficient deterrence. In response, Ellis's counsel argued for a within-guidelines sentence. Counsel highlighted the steps Ellis had taken toward earning a commercial driver's license. Counsel also noted that based on this conviction, Ellis would likely receive a prison term upon revocation of his supervised release from a previous case.

The court imposed an above-guidelines prison term. First, it noted that, including his current conviction, Ellis now had "three convictions for guns." Next, it pointed to the "gun violence currently occurring in the City of Chicago" and this court's decisions, stating "that felons in possession of guns create a substantial risk of violence to the public." It found that Ellis contributed to that risk by possessing a gun in a public area. The court then made the statement upon which Ellis centers his appeal:

Having been previously twice convicted of illegal possession of a firearm and, while he's still under the supervision of this court, he returns to the

very same dangerous criminal conduct in less than four months' time from his release. That is unacceptable. *You cannot keep committing the same violent crime* and expect to be treated leniently. You can't.

(emphasis added). Following this statement, it observed that Ellis had previously violated court supervision and now had, “[o]n at least two occasions,” fled from arresting officers, endangering people. The court concluded that Ellis “pose[d] a danger to the community” and sentenced him to 84 months’ imprisonment with three years of supervised release.

## II.

On appeal, Ellis argues that because the district court based his sentence on the erroneous belief that illegal gun possession is a “violent” crime, it violated his due process right to a sentence based on accurate information. He observes that when a sentencing court bases a sentence on “clearly erroneous facts,” it commits “a significant procedural error.” *United States v. Oliver*, 873 F.3d 601, 608 (7th Cir. 2017) (citation omitted). To prevail, Ellis must show that (1) “the alleged misinformation is indeed inaccurate,” and (2) the district court actually relied on the misinformation. *United States v. Issa*, 21 F.4th 504, 508 (7th Cir. 2021).

### A.

The parties initially dispute the standard of review. The government briefly argues that, because Ellis did not object as the court was explaining its sentence, review should be for plain error. *See United States v. Miller*, 900 F.3d 509, 512 (7th Cir. 2018). Ellis correctly responds that de novo review applies because he was not required to object to the court’s explanation for its ruling. *See United States v. Wood*, 31 F.4th 593, 598–99 (7th Cir. 2022). The ruling gave Ellis the basis for his appeal, and when a ruling creates “an entirely new ground for appeal,” a litigant need not challenge the judge to preserve appellate rights. *Id.* at 598; *see also* FED. R. CRIM. P. 51(a).

We pause here to emphasize our point. In *Wood*, we sought to resolve “an apparent tension within this Circuit’s caselaw” about what a defendant must do to preserve appellate rights in a situation like this. 31 F.4th at 597. We said that a court’s “explanation of its sentencing decision,” whether the explanation occurs before or after the court announces the sentence itself, “is a ruling to which an exception is not required.” *Id.* We added that a judge’s open-ended query at the end of the sentencing hearing, asking whether the judge needs to address “anything else,” does not obligate

counsel to object to the court's explanation of its sentencing decision. *Id.* at 598–99. Rather than waiting for appeal, at times it may be “sensible” for counsel to raise a purported error once the sentence is explained, but a litigant is not required to do so to preserve the error. *See id.* at 598.

With this understanding, we conclude that Ellis has not forfeited his claim of error. The error Ellis argues—that the judge wrongly equated illegal gun possession with a violent crime—occurred when the district court explained the sentence. Ellis need not have interrupted and objected then. Further, at the end of the hearing, after the judge imposed conditions of supervised release and Ellis raised unrelated issues with the court (such as any credit he deserved for time spent in custody), the court asked three times whether there was “[a]nything else?” Ellis did not respond to the promptings by objecting to the court's “violent crime” comment. Still, under *Wood*, to avoid forfeiture, Ellis was not required to do so. *See id.* at 599.

## B.

Turning to the merits, we need to reach only Ellis's first argument. He contends that the court's statement—“[y]ou cannot keep committing the same violent crime” — inaccurately characterized his gun-possession offense as a violent crime.

Ellis views the district court's statement out of context. When placed in context, his argument loses strength. We generally do not read a judge's various statements at sentencing in isolation from one another. *See, e.g., United States v. Coe*, 992 F.3d 594, 598 (7th Cir. 2021); *United States v. Shaw*, 39 F.4th 450, 460 (7th Cir. 2022). Rather, we consider the record as a whole. *See Coe*, 992 F.3d at 598. Here, Ellis correctly states that an offense under § 922(g)(1) is a status offense, *see United States v. Payne*, 964 F.3d 652, 655 (7th Cir. 2020), which is not a crime of violence and does not include violence as an element, *see Rehaif v. United States*, 139 S. Ct. 2191, 2195–96 (2019). But a review of the full sentencing transcript shows that the court did not mistakenly conclude that Ellis's offense was a violent crime.

First, several times during the sentencing hearing the court correctly observed that Ellis's convictions were for illegal gun possession, without mention of violence. At the outset, the court correctly said Ellis had “already been sentenced on two separate occasions for possession of a weapon.” Elsewhere, the court said Ellis repeatedly possessed “guns he's not supposed to have.” And just before the contested statement,

the court properly said that, prior to the current conviction, Ellis had been “twice convicted of illegal possession of a firearm.”

Second, placed in context, the contested statement—that Ellis committed a “violent crime”—permissibly reflects the legitimate view that by illegally possessing the gun, Ellis created a substantial risk of violence. At the hearing, the district court observed, as the Supreme Court and this court have observed, that a substantial risk of violence can arise when people convicted of felonies possess firearms. For example, the Supreme Court has stated that the purpose of statutes like § 922(g)(1) is “to keep firearms away from the persons Congress classified as potentially irresponsible and dangerous.” *Barrett v. United States*, 423 U.S. 212, 218 (1976). Likewise, this court has acknowledged that § 922(g)(1) reflects a concern that felons possessing guns present a “risk of danger to the public.” *United States v. Walls*, 225 F.3d 858, 865 (7th Cir. 2000); see also *United States v. Yancey*, 621 F.3d 681, 684 (7th Cir. 2010) (objective of § 922(g) is “suppressing armed violence”). Ellis replies that if the district court had meant that Ellis’s actions created a substantial risk of violence, it would have just said that. But the district court did say essentially that. It situated Ellis’s offense in the context of the City of Chicago, where many shootings occur that involve “illegal guns in the hands of people who are not allowed to have them, precisely like this defendant.”

Third, the court’s statement also reflects that under the specific circumstances of Ellis’s arrest—fleeing in public while illegally possessing a loaded gun—Ellis substantially amplified the risk of a violent outcome. Because the police had to chase and tackle him near other people, he magnified the risk that the loaded gun might fire, either intentionally or accidentally, and violently injure or kill an officer or bystander (or himself). And, as the court observed, Ellis had behaved similarly before an earlier arrest (which also led to a conviction for illegal gun possession).

Ellis argues his case resembles *United States ex rel. Welch v. Lane*, 738 F.2d 863 (7th Cir. 1984), and *United States v. Miller*, 900 F.3d at 509, but those cases are distinguishable. There, the sentencing courts relied on information about the defendants’ criminal histories that, when viewed in context, was inaccurate. In *Welch*, the sentencing court said “a significant factor in the Court’s determination of the sentence” was the defendant’s previous conviction for armed robbery, but he had been convicted of only simple robbery. 738 F.2d at 864–65. And in *Miller*, the district court emphasized the defendant’s criminal history and said multiple times this was the defendant’s seventh felony, even though it was his sixth. 900 F.3d at 511–12.

Ellis's case better resembles *United States v. Oliver*, in which a defendant convicted of defrauding investors argued that the sentencing court relied on inaccurate information when it stated his crimes had "taken some years off [people's] lives." 873 F.3d at 609 (alteration in original). This court acknowledged that statement may not have been "literally true" but ruled it had "no reason to think that the comment was intended as a literal statement of fact to support the sentence imposed." *Id.* Rather, in the context of the sentencing court's earlier statements—that the defendant was "never going to pay these [defrauded] people back"—the court merely used a "figure of speech" in referring to shortened lives. *Id.* Similarly here, the district court cannot be read to have literally meant that Ellis's crime was, as a matter of law, violent. Rather, when viewed in context, the court's statement reflected that Ellis had created a substantial risk of violence by illegally possessing a firearm and by fleeing the police with a loaded gun in public, requiring that he be chased and tackled.

Because Ellis has not shown that the court's statement was inaccurate, we need not reach the question whether the court relied on the statement.

AFFIRMED