UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4487

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

DONOVAN LETRELL HALL,

Defendant – Appellant.

On Remand from the Supreme Court of the United States.
(S. Ct. No. 17-9221)

Argued: May 4, 2023 Decided: June 2, 2023

Before GREGORY, Chief Judge, KING, Circuit Judge, and MOTZ, Senior Circuit Judge.

Affirmed in part, vacated in part, and remanded by unpublished per curiam opinion.

ARGUED: Jaclyn L. Tarlton, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Raleigh, North Carolina, for Appellant. David A. Bragdon, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee. **ON BRIEF:** G. Alan DuBois, Federal Public Defender, Louis C. Allen, Acting Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Raleigh, North Carolina, for Appellant. Robert J. Higdon, Jr., United States Attorney, Michael F. Easley, Jr., United States Attorney, Jennifer P. May-Parker, Assistant United States Attorney, Kristine L. Fritz, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

PER CURIAM:

Donovan Letrell Hall pleaded guilty in February 2017, in the Eastern District of North Carolina, to a single count of being a felon in possession of a firearm, in contravention of 18 U.S.C. §§ 922(g)(1) (the "felon-in-possession offense"). In July 2017, Hall was sentenced to 110 months in prison for that offense. On February 28, 2018, we affirmed Hall's conviction and sentence. *See United States v. Hall*, 725 F. App'x 210 (4th Cir. 2018). In June 2019, the Supreme Court granted certiorari with respect to our decision, vacated the judgment of affirmance, and remanded to us for further consideration of this appeal in light of the Court's decision in *Rehaif v. United States*, 139 S. Ct. 2191 (2019). *See Hall v. United States*, 139 S. Ct. 2771 (2019).

Upon review of the record on appeal, the various appellate submissions of the parties, and the oral argument of counsel, we are satisfied that Hall is not entitled to relief under the *Rehaif* precedent. *See* 139 S. Ct. at 2197 (recognizing that the prosecution must prove a *mens rea* element that the defendant knew he was a prohibited person when he possessed a firearm). At bottom, Hall — with two previous North Carolina felony convictions for which he served more than a year in custody — fails to demonstrate that there is a "reasonable probability" he would not have pleaded guilty to the felon-in-possession offense had "the [district court] . . . correctly advised him of the *mens rea* element" thereof. *See Greer v. United States*, 141 S. Ct. 2090, 2097 (2021). Accordingly, we are satisfied to again affirm Hall's 2017 conviction on the felon-in-possession offense.

Our disposition of the *Rehaif* issue notwithstanding, we are also convinced that Hall is now entitled to sentencing relief, pursuant to our Court's recent decisions in *United*

States v. Rogers, 961 F.3d 291 (4th Cir. 2020) (recognizing that all discretionary conditions of supervised release must be orally pronounced at sentencing), and *United States v. Singletary*, 984 F.3d 341 (4th Cir. 2021) (emphasizing that proper remedy for *Rogers* error is plenary resentencing).[1] As the government acknowledged during the oral argument in Richmond, a *Rogers* error is readily apparent on this record, in that the district court failed to orally pronounce 16 discretionary conditions of supervised release in Hall's sentencing proceedings. And our *Singletary* precedent provides — as the government also recognizes — that the remedy for such a sentencing error is a plenary resentencing.[2]

Despite acknowledging the *Rogers* error, the government nevertheless insists that sentencing relief for Hall on the *Rogers* error is foreclosed by the Supreme Court's *Rehaif*-related remand order. More specifically, the government interposes the "mandate rule" and maintains that we are not entitled to consider or recognize the *Rogers* error in these appeal proceedings. Put simply, and as explained below, we readily disagree.

As our Court has heretofore recognized, the mandate rule generally "forecloses relitigation of issues expressly or impliedly decided by the appellate court." *See United*

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[1] Although *Rogers* and *Singletary* had not been decided when Hall's sentence on the felon-in-possession offense was imposed by the district court in July 2017 — nor when we initially resolved this appeal in February 2018 — those decisions are now the applicable law of this circuit. And "on direct appeal 'a court is to apply the law in effect at the time it renders its decision." *See Lytle v. Comm'rs of Election of Union Cnty.*, 541 F.2d 421, 424 (4th Cir. 1976) (quoting *Bradley v. Richmond Sch. Bd.*, 416 U.S. 696, 711 (1974)).

[2] We appreciate and commend the government's acknowledgment of the *Rogers* error that we recognize in this appeal. That position is consistent with the principle that the prosecution's "interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done." *See Berger v. United States*, 295 U.S. 78, 88 (1935).

States v. Bell, 5 F.3d 64, 66 (4th Cir. 1993). Notably, however, the mandate rule does not apply in court of appeals proceedings when "extraordinary circumstances" are present. *Id.* at 67. Such circumstances include those presented when "a blatant error in the prior decision will, if uncorrected, result in a serious injustice." *Id.* (internal quotation marks omitted). That exception is satisfied here. Pursuant thereto, we are authorized to consider — and correct — the blatant *Rogers* error arising from the multiple unannounced discretionary conditions of supervised release that were erroneously included in Hall's 2017 criminal judgment. As one of our sister courts of appeals recently emphasized, a failure to announce such discretionary conditions at sentencing "is tantamount to sentencing the defendant *in absentia*," which is plainly impermissible. *See United States v. Diggles*, 957 F.3d 551, 557 (5th Cir. 2020) (en banc) (internal quotation marks omitted).

Pursuant to the foregoing, we reinstate our February 28, 2018 decision with respect to Hall's conviction on the felon-in-possession offense, in that we are satisfied to reject his assertion of a *Rehaif* error. On the other hand, we vacate Hall's July 2017 sentence and remand to the district court for such other and further sentencing proceedings as may be appropriate.[3]

AFFIRMED IN PART,
VACATED IN PART, AND REMANDED

[3] To complete the record, we grant Hall's unopposed motion to file a supplemental joint appendix. And we deny as moot Hall's motion for summary disposition.