UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4110

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHARLES YORK WALKER, JR.,

Defendant - Appellant.

On Remand from the Supreme Court of the United States.
(S. Ct. No. 19-5333)

Submitted: July 19, 2022 Decided: July 20, 2022

Before WILKINSON, NIEMEYER, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ARGUED: Jonathan D. Byrne, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellant. Steven Loew, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee. **ON BRIEF:** Christian M. Capece, Federal Public Defender, Wesley P. Page, Federal Public Defender, Lex A. Coleman, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellant. Michael B. Stuart, United States Attorney, W. Clinton Carte, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In 2017, defendant Charles York Walker, Jr., was found guilty by a jury in the Southern District of West Virginia of being a felon in possession of firearms, in contravention of 18 U.S.C. § 922(g)(1). Walker appealed from the resulting criminal judgment, contesting his conviction and sentence. In April 2019, we rejected Walker's appellate contentions and affirmed the district court's judgment. *See United States v. Walker*, 922 F.3d 239 (4th Cir. 2019).

About two months later, in June 2019, the Supreme Court issued its decision in *Rehaif v. United States*, holding that to convict a defendant of a § 922(g) offense, the government "must show that the defendant knew he possessed a firearm and also that he knew he had the relevant status [e.g., that he was a felon] when he possessed it." *See* 139 S. Ct. 2191, 2194 (2019). In November 2019, the Supreme Court granted Walker's petition for writ of certiorari and vacated our judgment, remanding for further consideration in light of *Rehaif*. *See Walker v. United States*, 140 S. Ct. 474 (2019).

In these remand proceedings, early in 2020, the parties filed supplemental briefs addressing the impact of *Rehaif*, if any, on Walker's case. We thereafter placed the case in abeyance pending, inter alia, the Supreme Court's decision in *United States v. Greer*, 141 S. Ct. 2090 (2021). Significantly, *Greer* addressed a contention — like Walker's — that the defendant "was entitled to a new trial [on plain-error review] because the District Court failed to instruct the jury that he had to know he was a felon." *See* 141 S. Ct. at 2096. In so doing, *Greer* clarified that such "a *Rehaif* error is not a basis for plain-error relief unless the defendant first makes a sufficient argument or representation on appeal that he

would have presented evidence at trial that he did not in fact know he was a felon." *Id*. at 2100. The reviewing court must then "determine whether the defendant has carried the burden of showing a reasonable probability that [absent the *Rehaif* error] the outcome of the district court proceeding would have been different," i.e., "that he would have been acquitted." *Id.* at 2097, 2100 (internal quotation marks omitted).

Unfortunately for Walker, the record reflects that he is not one of those defendants who "can make an adequate showing on appeal that he would have presented evidence in the district court that he did not in fact know he was a felon when he possessed firearms." *See Greer*, 141 S. Ct. at 2097 (describing the "uphill climb" that a defendant faces in trying to make such a showing). Among other compelling evidence that Walker knew he was a felon at the relevant time is that he had previously been convicted under § 922(g)(1) of being a felon in possession of a firearm. In these circumstances, there is no feasible basis for plain-error relief under *Rehaif*. Accordingly, we again affirm the judgment of the district court.

AFFIRMED