UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4401

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PHYTEAF PHEQUAN MCCORMICK,

Defendant - Appellant.

On Remand from the Supreme Court of the United States.
(S. Ct. No. 19-5270)

Submitted: January 10, 2023 Decided: January 30, 2023

Before DIAZ, QUATTLEBAUM, and HEYTENS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ON BRIEF: G. Alan DuBois, Federal Public Defender, Eric Joseph Brignac, Chief Appellate Attorney, Stephen C. Gordon, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Raleigh, North Carolina, for Appellant. Robert J. Higdon, Jr., United States Attorney, Jennifer P. May-Parker, Assistant United States Attorney, Kristine L. Fritz, Assistant United States Attorneys, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

PER CURIAM:

Phyteaf Phequan McCormick appeals his 90-month sentence imposed pursuant to his guilty plea to possession of ammunition as a convicted felon, in violation of 18 U.S.C. § 922(g)(1). On appeal, McCormick challenged the substantive reasonableness of his sentence, and we affirmed. *United States v. McCormick*, 765 F. App'x 4, 5 (4th Cir. 2019). McCormick subsequently petitioned for a writ of certiorari; the Supreme Court granted the petition, vacated this court's opinion, and remanded for further consideration in light of *Rehaif v. United States*, 139 S. Ct. 2191 (2019). *United States v. McCormick*, 140 S. Ct. 99 (2019). We again affirm.

McCormick concedes that he cannot establish plain error regarding his *Rehaif* claim after *Greer v. United States*, 141 S. Ct. 2090, 2100 (2021) ("[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."); *see id.* at 2098. Further, he raises no additional challenge to his sentence, and we therefore affirm for the reasons stated in our previous opinion.[*] As outlined in that opinion, our review of the record confirms that McCormick's upward-variant sentence is substantively reasonable. *See United States v. Washington*, 743 F.3d

[*] When the Supreme Court remands a case "with specific instructions, [the appellate] court must confine its review to the limitations established by the Supreme Court's remand order." *United States v. Duarte-Juarez*, 441 F.3d 336, 340 (5th Cir. 2006). Accordingly, absent an argument that there has been intervening controlling precedent, we will not reconsider McCormick's sentence. *See United States v. Bell*, 5 F.3d 64, 66-67 (4th Cir. 1993).

938, 944 (4th Cir. 2014) (providing standard). In imposing the sentence, the district court considered McCormick's criminal history, the offense conduct, and the need for the sentence imposed to promote respect for the law, deter McCormick from engaging in future criminal conduct, and protect the community. McCormick argues that his offense conduct and criminal history should not have been used to support the upward variance, as such factors should be principally accounted for in the Sentencing Guidelines range. This assertion is misplaced because "a fact that is taken into account in computing a Guidelines range is not excluded from consideration when determining whether the Guideline[s] sentence adequately serves the four purposes of [18 U.S.C.] § 3553(a)(2)." *United States v. Bollinger*, 798 F.3d 201, 221 (4th Cir. 2015) (internal quotation marks omitted).

Accordingly, we affirm the criminal judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED