UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4531

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRYSHUN GENARD FURLOW,

Defendant - Appellant.

On Remand from the Supreme Court of the United States.
(S. Ct. No. 19-7007)

Submitted: June 9, 2022 Decided: July 19, 2022

Before WILKINSON, KING, and AGEE, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ARGUED: Kimberly Harvey Albro, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Columbia, South Carolina, for Appellant. Robert Frank Daley, Jr., OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee. **ON BRIEF:** Sherri A. Lydon, United States Attorney, Corey F. Ellis, United States Attorney, Stacey D. Haynes, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

PER CURIAM:

In 2018, defendant Bryshun Genard Furlow pleaded guilty in the District of South Carolina to two charges, including one count of being a felon in possession of a firearm and ammunition, in contravention of 18 U.S.C. § 922(g)(1). Furlow appealed from the resulting criminal judgment, contesting the sentence imposed by the district court. In 2019, we rejected Furlow's challenges to his sentence and affirmed the district court's judgment. *See United States v. Furlow*, 928 F.3d 311 (4th Cir. 2019).

One week earlier, the Supreme Court had 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 2020, the Supreme Court granted Furlow's petition for writ of certiorari and vacated our judgment, remanding for further consideration in light of *Rehaif*. *See Furlow v. United States*, 140 S. Ct. 2824 (2020).

In these remand proceedings, we placed Furlow's case in abeyance pending our decision in *United States v. Gary*, 954 F.3d 194 (4th Cir. 2020), which was subsequently vacated by the Supreme Court in *United States v. Greer*, 141 S. Ct. 2090 (2021). Those decisions addressed contentions — like Furlow's — that the defendant's "guilty plea must be vacated [on plain-error review] because the District Court failed to advise him during the plea colloquy that, if he went to trial, a jury would have to find that he knew he was a felon." *See Greer*, 141 S. Ct. at 2096. Significantly, *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 not have pled guilty." *Id.* at 2097, 2100 (internal quotation marks omitted).

Furlow has since filed a supplemental brief conceding that, as clarified by *Greer*, "*Rehaif* has no impact on [his] appeal." *See* Suppl. Br. of Appellant 4 (specifying that "after the Supreme Court's opinion in *Greer* . . . , Furlow does not wish to pursue any appellate issue related to *Rehaif*"). We accept Furlow's concession, as we discern no basis for plain-error relief under *Rehaif*. Accordingly, we again affirm the judgment of the district court.[*]

AFFIRMED

[*] Although he does not contest his conviction under *Rehaif*, Furlow has sought to raise new challenges to his sentence in reliance on intervening precedent. The mandate rule bars our review of the newly-raised sentencing issues. *See United States v. Bell*, 5 F.3d 64, 66-67 (4th Cir. 1993) (explaining the mandate rule and the limited exceptions thereto).