UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4529

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DOMINIQUE ROMANDO TURNER,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Timothy M. Cain, District Judge. (6:17-cr-00750-TMC-1)

Submitted: May 20, 2022 Decided: June 22, 2022

Before GREGORY, Chief Judge, WYNN, Circuit Judge, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Christopher R. Geel, GEEL LAW FIRM, LLC, Charleston, South Carolina, for Appellant. Corey F. Ellis, United States Attorney, Jamie L. Schoen, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, South Carolina, for Appellee.

PER CURIAM:

Dominique Romando Turner appeals his conviction and below-Guidelines range sentence after pleading guilty to Hobbs Act robbery, conspiracy, and firearm charges. On appeal, Turner's attorney filed a brief under *Anders v. California*, 386 U.S. 738 (1967), asserting there are no meritorious grounds for appeal but raising the issues of whether his guilty plea was valid, whether the Government breached the parties' plea agreement, and whether the district court imposed a procedurally and substantively reasonable sentence. Turner was notified of his right to file a pro se supplemental brief but has not done so. We previously held this appeal in abeyance pending decisions addressing *Rehaif v. United States*, 139 S. Ct. 2191 (2019), which was decided after Turner's guilty plea; and the parties filed supplemental briefs on the impact of *Rehaif* in this case. We now affirm.

In federal cases, Rule 11 of the Federal Rules of Criminal Procedure "governs the duty of the trial judge before accepting a guilty plea." *Boykin v. Alabama*, 395 U.S. 238, 243 n.5 (1969). "Rule 11 sets out the information a court is to convey to ensure that a defendant who pleads guilty understands the consequences of the plea." *United States v. Nicholson*, 676 F.3d 376, 381 (4th Cir. 2012). "The court also must determine that the plea is voluntary and that there is a factual basis for the plea." *United States v. Williams*, 811 F.3d 621, 622 (4th Cir. 2016). "Generally, we review the acceptance of a guilty plea under the harmless error standard." *Id*. "But when, as here, a defendant fails to move in the district court to withdraw his or her guilty plea, any error in the Rule 11 hearing is reviewed only for plain error." *Id*. "To succeed under plain error review, a defendant must show

that: (1) an error occurred; (2) the error was plain; and (3) the error affected his substantial rights." *United States v. Lockhart*, 947 F.3d 187, 191 (4th Cir. 2020) (en banc).

To establish that plain error affected substantial rights in the guilty plea context, "a defendant bears the burden to show 'a reasonable probability that, but for the error, he would not have entered the plea.'" *Id*. at 192; *see also Greer v. United States*, 141 S. Ct. 2090, 2097 (2021) (for plain error under *Rehaif v. United States*, 139 S. Ct. 2191 (2019), a defendant "has the burden of showing that, if the District Court had correctly advised him of the *mens rea* element of the offense, there is a 'reasonable probability' that he would not have pled guilty"). "If those three requirements are met, [this Court] may grant relief if it concludes that the error had a serious effect on 'the fairness, integrity or public reputation of judicial proceedings.'" *Greer*, 141 S. Ct. at 2096-97.

"[I]n *Rehaif*, the Supreme Court concluded that to obtain a § 922(g) conviction, the government 'must show that the defendant knew he possessed a firearm *and also that he knew he had the relevant [felon] status when he possessed it*." *United States v. Caldwell*, 7 F.4th 191, 213 (4th Cir. 2021) (quoting *Rehaif*, 139 S. Ct. at 2194). "As the Supreme Court has noted, '[i]n a felon-in-possession case where the defendant was in fact a felon when he possessed firearms, the defendant faces an uphill climb in trying to satisfy the substantial-rights prong of the plain-error test based on an argument that he did not know he was a felon. The reason is simple: If a person is a felon, he ordinarily knows he is a felon.'" *Id*. (quoting *Greer*, 141 S. Ct. at 2097). However, "the mere undisputed fact that [the defendant] was a felon at the time of the [offense] is not dispositive." *Id*.

"[T]here may be cases in which a defendant who is a felon 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." *Greer*, 141 S. Ct. at 2097. "But if a defendant does not make such an argument or representation on appeal, the appellate court will have no reason to believe that the defendant would have presented such evidence to a jury, and thus no basis to conclude that there is a 'reasonable probability' that the outcome would have been different absent the *Rehaif* error." *Id.*; *see United States v. Hobbs*, 24 F.4th 965, 973 (4th Cir. 2022) (concluding that defendant failed to make this showing where he testified at trial that he was not allowed to possess firearms, and on appeal, he had "not proffered 'a sufficient argument or representation' that he would have presented a factual basis at trial for contradicting this evidence that he knew he was a felon") (quoting *Greer*, 141 S. Ct. at 2100)); *Caldwell*, 7 F.4th at 213 (concluding that the defendant could not make this showing where he never disputed the validity of his felony convictions and had served sentences longer than a year "making it virtually impossible to believe he did not know he had been convicted of crimes punishable by such sentences").

Here, we conclude that the district court plainly erred at the Rule 11 hearing by not advising Turner that the Government had to prove he knew he was a felon at the time of his § 922(g) offense. However, we find no basis in the record to conclude that if the court had "correctly advised him of the *mens rea* element of the offense, there is a 'reasonable probability' that he would not have pled guilty." *Greer*, 141 S. Ct. at 2097. It is undisputed that Turner had at least one prior conviction that was punishable by more than one year in prison; and he served at least 522 days on that conviction, with the balance of his 10-year

prison sentence suspended to 30 months of probation. Moreover, on appeal, his counsel represents that he discussed the matter with him and concluded there was no non-frivolous basis for asserting he would not have pled guilty if correctly informed. Since he does not dispute the validity of his felony conviction and in fact served more than one year, we conclude that he has not made the required showing. *See Caldwell*, 7 F.4th at 213.

Turner's counsel next raises the issue of whether the Government breached the plea agreement, but he concludes the record does not reveal any breach. We agree.

"Plea agreements are grounded in contract law, and as with any contract, each party is entitled to receive the benefit of his bargain." *United States v. Edgell*, 914 F.3d 281, 287 (4th Cir. 2019) (internal quotation marks omitted). "While we employ traditional principles of contract law as a guide in enforcing plea agreements, we nonetheless give plea agreements greater scrutiny than we would apply to a commercial contract because a defendant's fundamental and constitutional rights are implicated when he is induced to plead guilty by reason of a plea agreement." *Id*. (internal quotation marks omitted). "The government breaches a plea agreement when a promise it made to induce the plea goes unfulfilled." *United States v. Tate*, 845 F.3d 571, 575 (4th Cir. 2017).

Where, as here, the defendant "did not challenge the government's purported breach of the plea agreement before the district court, we review his claim for plain error." *Edgell*, 914 F.3d at 286. "Under that standard, [he] must show that the government plainly breached its plea agreement with him and that the breach both affected his substantial rights and called into question the fairness, integrity, or public reputation of judicial proceedings."

Id. at 286-87. We have reviewed the record and conclude that the Government did not breach the plea agreement, and Turner received the benefit of his bargain.

Finally, *Anders* counsel raises the issue of whether Turner's sentence is reasonable, but he concludes that "the record does not reveal any basis to argue that Turner's below-Guidelines sentence was procedurally or substantively unreasonable." We agree.

"This Court 'review[s] all sentences—whether inside, just outside, or significantly outside the Guidelines range—under a deferential abuse-of-discretion standard.'" *United States v. Torres-Reyes*, 952 F.3d 147, 151 (4th Cir. 2020) (quoting *Gall v. United States*, 552 U.S. 38, 41 (2007)). "First, we 'ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the [18 U.S.C.] § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence.'" *United States v. Fowler*, 948 F.3d 663, 668 (4th Cir. 2020) (quoting *Gall*, 552 U.S. at 51). "If the Court 'find[s] no significant procedural error, [it] then consider[s] the substantive reasonableness of the sentence imposed.'" *United States v. Arbaugh*, 951 F.3d 167, 172 (4th Cir. 2020).

"As is well understood, to meet the procedural reasonableness standard, a district court must conduct an individualized assessment of the facts and arguments presented and impose an appropriate sentence, and it must explain the sentence chosen." *United States v. Nance*, 957 F.3d 204, 212 (4th Cir. 2020) (internal quotation marks omitted). "Specifically, a district court's explanation should provide some indication [] that the court considered the § 3553(a) factors and applied them to the particular defendant, and also that

it considered a defendant's nonfrivolous arguments for a lower sentence." *Id*. at 212-13 (internal quotation marks omitted). "Importantly, it is also well established that our review of a district court's sentencing explanation is not limited to the court's statements at the moment it imposes sentence," but rather, "we look at the full context" of those statements when evaluating them. *Id*. at 213.

"If the sentence 'is procedurally sound, [this Court] then consider[s] the substantive reasonableness of the sentence,' taking into account the totality of the circumstances." *United States v. Provance*, 944 F.3d 213, 218 (4th Cir. 2019) (quoting *Gall*, 552 U.S. at 51). Any sentence within or below a properly calculated Guidelines range is presumptively reasonable. *United States v. Gillespie*, 27 F.4th 934, 945 (4th Cir. 2022). A defendant can only rebut the presumption by showing the sentence is unreasonable when measured against the § 3553(a) factors. *United States v. Louthian*, 756 F.3d 295, 306 (4th Cir. 2014).

We have reviewed the record and conclude that Turner's sentence is procedurally and substantively reasonable, and the district court did not abuse its discretion in sentencing him. The court properly calculated his advisory Guidelines range, considered the § 3553(a) factors, conducted an individualized assessment of the facts and arguments presented, and adequately explained the chosen sentence. Taking into account a totality of circumstances, we further conclude that Turner has not rebutted the presumption of reasonableness.

In accordance with *Anders*, we have reviewed the entire record and have found no meritorious grounds for appeal. We therefore affirm the district court's judgment. This court requires that counsel inform his or her client, in writing, of his or her right to petition the Supreme Court of the United States for further review. If the client requests that a

petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on the client. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED