

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-4575

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARAT MIKE YELIZAROV,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
Ellen Lipton Hollander, Senior District Judge. (1:15-cr-00261-ELH-6)

Submitted: June 29, 2022

Decided: July 14, 2022

Before DIAZ and HARRIS, Circuit Judges, and FLOYD, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

ON BRIEF: Michael D. Montemarano, MICHAEL D. MONTEMARANO, P.A., Ellicott City, Maryland, for Appellant. Paul E. Budlow, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Marat Mike Yelizarov pled guilty, pursuant to a written plea agreement, to Hobbs Act conspiracy, 18 U.S.C. § 1951(a); kidnapping, 18 U.S.C. § 1201(a); and brandishing a firearm in relation to a crime of violence, 18 U.S.C. § 924(c). The district court sentenced him in May 2016, to concurrent 132-month sentences on the Hobbs Act conspiracy and kidnapping charges and a consecutive 84-month sentence on the firearm offense, for an aggregate sentence of 216 months.

The district court subsequently granted Yelizarov's 28 U.S.C. § 2255 motion and vacated his § 924(c) conviction in light of *United States v. Davis*, 139 S. Ct. 2319 (2019) (holding that residual clause definition of "violent felony" in 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague), *United States v. Simms*, 914 F.3d 229, 233 (4th Cir. 2019) (en banc) (holding that Hobbs Act conspiracy does not categorically qualify as a crime of violence), and *United States v. Walker*, 934 F.3d 375 (4th Cir. 2019) (holding that kidnapping does not categorically qualify as a crime of violence under § 924(c)(3)(A)). The court vacated Yelizarov's sentence and set a date for resentencing on the remaining two counts.

On November 12, 2020, the district court resentenced Yelizarov to concurrent 204-month terms on the Hobbs Act conspiracy and kidnapping offenses. Yelizarov appeals this judgment. Yelizarov's attorney has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), stating that there are no meritorious grounds for appeal, but addressing whether trial counsel was ineffective for failing to argue for or obtain a lower sentence. Although advised of his right to do so, Yelizarov has not filed a pro se supplemental brief. The

Government has moved to dismiss the appeal based on the appeal waiver in Yelizarov's plea agreement.

In accordance with *Anders*, we found a meritorious issue that falls outside the scope of Yelizarov's appeal waiver and requires us to vacate his sentence and remand for resentencing.¹ Specifically, some of the non-mandatory conditions of supervised release included in the written criminal judgment were not orally pronounced at sentencing.

To protect a defendant's right to be present when he is sentenced, "all non-mandatory conditions of supervised release must be announced at a defendant's sentencing hearing." *United States v. Rogers*, 961 F.3d 291, 296 (4th Cir. 2020) (citations omitted). "Discretionary conditions that appear for the first time in a subsequent written judgment, . . . are nullities; the defendant has not been sentenced to those conditions, and a remand for resentencing is required." *Singletary*, 984 F.3d at 344. "[W]e review the consistency of [a defendant's] oral sentence and the written judgment de novo, 'comparing the sentencing transcript with the written judgment to determine whether an error occurred as a matter of law.'" *Rogers*, 961 F.3d at 296.

During Yelizarov's sentencing hearing, the district court did not announce three discretionary conditions of supervised release that it ultimately included in the written judgment. These discretionary conditions require that Yelizarov "submit to substance abuse testing," "provide the probation officer with access to any requested financial

¹ Because we must vacate Yelizarov's sentence, we will not address Yelizarov's claim that he was denied effective assistance of counsel at sentencing. *See United States v. Singletary*, 984 F.3d 341, 345-46 (4th Cir. 2021).

information,” and “refrain from alcohol use.” The district court failed to pronounce or otherwise incorporate these discretionary conditions into the conditions of supervised release announced at sentencing. Where, as here, the court fails to announce non-mandatory conditions of supervised release that are later included in the written judgment, the remedy is to vacate the sentence and remand for a full resentencing hearing.² *See Singletary*, 984 F.3d at 347 & n.4.

Accordingly, we deny the Government’s motion to dismiss the appeal, vacate Yelizarov’s sentence, and remand for resentencing. This court requires that counsel inform Yelizarov, in writing, of the right to petition the Supreme Court of the United States for further review. If Yelizarov 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 Yelizarov. 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.

VACATED AND REMANDED

² Because the sentence was not properly imposed, we do not address any other potential issues related to Yelizarov’s sentence at this juncture. *See Singletary*, 984 F.3d at 346-47 (declining to consider additional challenges to original sentence).