UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4471

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TOVIS ATION RICHARDSON,

Defendant - Appellant.

On Remand from the Supreme Court of the United States. (S. Ct. No. 25-5986)

Submitted: July 31, 2026 Decided: August 20, 2026

Before WYNN and THACKER, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Michelle A. Liguori, Chelsea A. Pieroni, ELLIS & WINTERS, LLP, Raleigh, North Carolina, for Appellant. Michael F. Easley, Jr., United States Attorney, David A. Bragdon, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In 2023, pursuant to a written plea agreement, Tovis Ation Richardson pled guilty to two counts: (1) conspiracy to distribute and possess with intent to distribute methamphetamine; (2) possession with intent to distribute methamphetamine. *See* 21 U.S.C. §§ 841(a)(1), 846. He later received a 240-month sentence.

Richardson filed a direct appeal of his sentence raising two issues: (1) whether the district court erred in applying a sentencing enhancement for firearm possession; and (2) whether counsel provided ineffective assistance by failing to object to this enhancement. As to the first issue, we found that we were unable to address its merits because Richardson waived his right to bring the argument.[1] *United States v. Richardson*, 146 F.4th 394, 398–400 (4th Cir. 2025), *cert. granted, judgment vacated*, No. 25-5986, 2026 WL 1855087 (U.S. June 29, 2026). As to the second, we found that it does not conclusively appear in the record that counsel provided ineffective assistance, as is required on direct appeal. *Id.* at 400–05. We ultimately affirmed the judgment of the district court. *Id.* at 405.

[1] In Richardson's opening brief, he identified that "[n]otwithstanding the appeal waiver, the government may choose to address the merits and elect not to seek enforcement of the appeal waiver." Opening Br. at 8 n.2. He noted that the waiver does not apply to claims of ineffective assistance of counsel. In response, the government "elect[ed] to seek enforcement." Resp. Br. at 11. In reply, Richardson argued that the government had not shown that the appeal waiver was enforceable. Thus, prior to reaching the merits of the sentencing enhancement arguments, we had to ascertain whether Richardson's appeal waiver bars his sentencing argument.

Richardson petitioned for certiorari, which the Supreme Court granted. The Supreme Court vacated and remanded the Fourth Circuit's opinion so that we may apply the new appeal waiver test that the Court established in *Hunter v. United States*, 146 S. Ct. 1702 (2026). Now applying the *Hunter* test, we again affirm the judgment of the district court.[2]

I.

In August 2021, police learned that Richardson and two co-conspirators were distributing narcotics in Johnston County, North Carolina. Between August 26, 2021, and October 14, 2021, a confidential informant purchased methamphetamine from Richardson eight times. On at least three of these occasions, Richardson dealt from his car.

On October 8, 2021, investigators pulled Richardson over. He agreed to accompany them to his home, where police executed a search warrant. Police recovered methamphetamine, marijuana, cell phones, $40,590 in cash, a digital scale, and a box of ammunition of various calibers and gauges. Police also recovered a 12-guage shotgun from

[2] The Supreme Court vacated and remanded the Fourth Circuit's opinion to consider *Hunter*, 146 S. Ct. 1702. However, *Hunter* does not change the binding case law that informed our prior assessment of Richardson's claimed ineffective assistance of counsel. *See id.* Therefore, with no change in binding caselaw, on remand we adopt our prior analysis as to the second issue of whether Richardson's counsel provided ineffective assistance. *See Richardson*, 146 F.4th at 400–05. In short, we again conclude that "we see no reason to take the extraordinary step of finding deficient performance at this stage." *Id.* at 405 (citation modified).

the trunk of Richardson's car, which was parked on the property. The shotgun was a gift from his father.

Richardson was subsequently charged in the Eastern District of North Carolina with (1) conspiracy to distribute and possess with intent to distribute methamphetamine and (2) possession with intent to distribute methamphetamine. *See* 21 U.S.C. §§ 841(a)(1), 846. He retained counsel and, pursuant to a written plea agreement, pled guilty to both counts.

Important here, Richardson's plea agreement contains an appeal waiver. It states: "The Defendant agrees: . . . To waive knowingly and expressly the right to appeal the conviction and whatever sentence is imposed on any ground . . . excepting an appeal or motion based upon grounds of ineffective assistance of counsel or prosecutorial misconduct not known to the Defendant at the time of [his] guilty plea." J.A. 59.

During Richardson's sentencing, the district court relied on a presentence report (PSR). The PSR calculated zero criminal history points and a base offense level of 36. It then applied two sentencing enhancements: one under U.S.S.G. § 2D1.1(b)(1) for firearm possession; and another under § 2D1.1(b)(12) for "maintain[ing] a premises for the purpose of manufacturing or distributing a controlled substance." Each enhancement increased the base offense level by two points.

The PSR also applied two sentencing reductions: one under § 3E1.1(a) for "acceptance of responsibility"; and another under § 3E1.1(b) for "timely notifying authorities of his intention to enter a plea of guilty." Together, they decreased the base

offense level by three points. The PSR ultimately calculated a total offense level of 37. The corresponding Sentencing Guidelines range was 210-to-262 months.

Neither party objected to the PSR, and both recommended a 240-month sentence. The district court adopted the PSR and imposed a 240-month sentence.

II.

We begin by determining whether Richardson's appeal waiver is enforceable. We conduct this analysis *de novo*. *United States v. Carter*, 87 F.4th 217, 223–24 (4th Cir. 2023) (citing *United States v. Boutcher*, 998 F.3d 603, 608 (4th Cir. 2021)). When, as here, "the government seeks to enforce an appeal waiver and has not breached the plea agreement, we will enforce the waiver if it is valid and if the issue being appealed falls within its scope." *Id.* (quoting *United States v. Beck*, 957 F.3d 440, 445 (4th Cir. 2020)).

A.

First, validity. "A waiver is valid if 'the defendant knowingly and intelligently agreed to waive the right to appeal.'" *United States v. Soloff*, 993 F.3d 240, 243 (4th Cir. 2021) (quoting *United States v. Blick*, 408 F.3d 162, 169 (4th Cir. 2005)). To analyze these factors, "we consider 'the totality of the circumstances,' including the experience and conduct of the defendant, his educational background, and his knowledge of the plea agreement and its terms." *United States v. McCoy*, 895 F.3d 358, 362 (4th Cir. 2018) (quoting *United States v. Thornsbury*, 670 F.3d 532, 537 (4th Cir. 2012)). "Generally though, 'if a district court questions a defendant regarding the waiver of appellate rights

during the Rule 11 colloquy and the record indicates that the defendant understood the full significance of the waiver, the waiver is valid.'" *Id.* (quoting *Thornsbury*, 670 F.3d at 537). We previously found it uncontested that Richardson's waiver was knowing and intelligent and therefore valid. As binding precedent has not changed, we need not revise this analysis on remand.

B.

Next, scope. "We use traditional principles of contract law to determine whether an issue falls within the scope of a valid waiver." *Carter*, 87 F.4th at 224 (citing *United States v. Yooho Weon*, 722 F.3d 583, 588 (4th Cir. 2013)). Under this framework, we must find the waiver "clearly and unambiguously applicable to the issues raised by the defendant on appeal." *Id.* (quoting *Yooho Weon*, 722 F.3d at 588).

The first issue that Richardson raises is the application of the firearm enhancement, § 2D.1.1(b)(1). Richardson's waiver clearly and unambiguously applies to this issue. His waiver explicitly forecloses appeals "on any ground," including appeals "pursuant to 18 U.S.C § 3742." J.A. 59. Section 3742(a)(2) would otherwise permit an appeal based on "an incorrect application of the sentencing guidelines." This analysis stands on remand.

We next turn to Richardson's argument that the "failure to correct [the firearm enhancement] would result in a miscarriage of justice." Reply Br. at 14. More specifically, he argues that the enhancement "could render [him] ineligible for a sentencing reduction" under § 4C1.1, which became effective after his plea and permits a two-point offense-level reduction for certain defendants with zero criminal history points. *Id.* at 14, 19–20 (discussing § 4C1.1 and its retroactive application).

Richardson is correct that this Court "will refuse to enforce an otherwise valid waiver if to do so would result in a miscarriage of justice." *United States v. Adams*, 814 F.3d 178, 182 (4th Cir. 2016) (citing *United States v. Johnson*, 410 F.3d 137, 151 (4th Cir. 2005)). We previously held that "Richardson's alleged 'miscarriage of justice' is merely a re-packaged Guidelines claim that aims to re-bargain the terms of his waiver. Therefore, even assuming his eligibility for a sentencing reduction under § 4C1.1, our 'failure to correct' this issue would not result in a miscarriage of justice." *Richardson*, 146 F.4th at 399. The Supreme Court has since clarified its jurisprudence regarding what suffices to establish a "miscarriage of justice," *see Hunter*, 146 S. Ct. at 1713–14, and has remanded this case for us to apply that new framework, *Richardson*, 2026 WL 1855087, at *1.

In *Hunter*, the Court approved the majority view among the circuits that "an appeal waiver is unenforceable when it would result in a miscarriage of justice." 146 S.Ct. at 1713. This new rule comes with a caveat: "[s]tandard-fare errors in misapplying sentencing law cannot cancel an appeal waiver." *Id.* Instead, the Court provides several non-exclusive examples of the types of errors that "would bring the judiciary into disrepute." *Id.* at 1714. First, "a sentence exceeding what the relevant statute allows—most commonly, a term of years above the maximum prescribed." *Id.* Second, "a sentence that is infected with a blatant constitutional error, such as when a judge takes account of a constitutionally impermissible factor (like race) or imposes a constitutionally infirm condition of supervised release (like barring a defendant from becoming pregnant)." *Id.* And third, "a defendant may appeal if his sentence was imposed without some minimum of civilized procedure as in, yes, the twelve orangutans case—or less extravagantly, one in

which the judge refused to hold a hearing consonant with basic principles of law." *Id.* (first citing *United States v. Adkins*, 743 F.3d 176, 192–93 (7th Cir. 2014); and then citing *United States v. Behrens*, 375 U.S. 162, 165–66 (1963)).

Richardson cannot clear the miscarriage-of-justice standard's "high bar" because the error that he alleges is the type that "a judge could reasonably make," and is therefore insufficiently "obvious" and "egregious." *See id.* at 1713. This is a straightforward application of the Supreme Court's caveat that "[s]tandard-fare errors in misapplying sentencing law cannot cancel an appeal waiver." *Id.* If misapplications of sentencing law cannot cancel an appeal waiver, then it tracks that the follow-on effects to sentencing reductions from misapplied sentencing law cannot cancel an appeal waiver either. *See id.* Therefore our "failure to correct" this issue would not result in a miscarriage of justice.

III.

Based on the foregoing, the judgment of the district court is

AFFIRMED.