UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-4529

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARKELL LAKEITH MASON,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Catherine C. Eagles, Chief District Judge. (1:24-cr-00146-CCE-1)

Submitted: August 20, 2026 Decided: August 24, 2026

Before AGEE and RUSHING, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: William S. Trivette, Greensboro, North Carolina, for Appellant. Julie Carol Niemeier, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Markell Lakeith Mason pled guilty to possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) and the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(1). Under the ACCA, a mandatory minimum 180-month prison term applies if a defendant convicted of a § 922(g) offense "has three previous convictions . . . for a violent felony or a serious drug offense, or both, committed on occasions different from one another," 18 U.S.C. § 924(e)(1) ("the different occasions issue"). The Government alleged in the indictment that Mason had three ACCA-qualifying predicate convictions. The district court sentenced Mason to 180 months' imprisonment and 5 years' supervised release.

On appeal, Mason's counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), stating that there are no meritorious grounds for appeal, but raising as an issue whether the district court plainly erred in accepting Mason's guilty plea. The district court advised Mason during the guilty plea colloquy that, if he went "to trial on the [ACCA] penalty, the Government would have to prove to the jury by a preponderance of the evidence[] that [he] had three or more prior convictions, and the [c]ourt must find that three or more of those are violent felonies." J.A. 25.[*] Counsel argues that the district court plainly erred in providing this advice ("the preponderance advice") because it violates *Erlinger v. United States*, 602 U.S. 821 (2024). In *Erlinger*, the Supreme Court held that

[*] This citation to the "J.A." refers to the joint appendix filed by the parties in this appeal.

the facts relating to the different occasions issue "must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea)." *Id.* at 834. Error under *Erlinger* is present where the district court fails to advise the defendant, during his guilty plea colloquy, of the right to have a jury resolve the different occasions issue. *United States v. Brown*, 136 F.4th 87, 92 (4th Cir.), *cert. denied*, 146 S. Ct. 391 (2025). Although notified of his right to do so, Mason has not filed a pro se supplemental brief. The Government declined to file a brief. We affirm.

Because Mason did not attempt to withdraw his guilty plea or otherwise object to the guilty plea colloquy on the basis that the preponderance advice was erroneous, we consider counsel's *Erlinger* challenge "under the rigorous plain error standard." *United States v. Solis-Rodriguez*, 144 F.4th 617, 623 (4th Cir. 2025) (internal quotation marks omitted), *cert. denied*, 146 S. Ct. 1607 (2026). To succeed on review for plain error, Mason "must show (1) an error occurred; (2) the error was plain or obvious; and (3) the error affected his substantial rights." *Id.* To show that an error in his guilty plea colloquy affected his substantial rights, Mason "must show a reasonable probability that, but for the error, he would not have entered the plea." *Id.* at 624 (internal quotation marks omitted). Even if Mason makes these showings, "we will exercise our discretion to correct the error only if a refusal to do so would seriously affect the fairness, integrity or public reputation of judicial proceedings." *Id.* (citation modified).

Mason has established that plain *Erlinger* error occurred. *See United States v. Ramirez-Castillo*, 748 F.3d 205, 215 (4th Cir. 2014) (recognizing error is plain when it is "clear or obvious at the time of appellate consideration" and that error is so if "settled law

of the Supreme Court or this circuit establishes that an error has occurred" (citation modified)). The district court provided Mason with the preponderance advice at the guilty plea colloquy. The decisions in *Erlinger* and *Brown* establish that this error is clear or obvious and therefore is plain.

Turning to the third prong, we conclude after reviewing the record against applicable precedent, *see Wooden v. United States*, 595 U.S. 360, 369 (2022) (emphasizing that "[o]ffenses committed close in time, in an uninterrupted course of conduct, will often count as part of one occasion" under ACCA, while "offenses separated by substantial gaps in time or significant intervening events" will not); *Brown*, 136 F.4th at 97-99 (listing circumstances supporting conclusion that *Erlinger* error did not affect defendant's substantial rights and noting that "the word occasion in [the] ACCA should be given its ordinary meaning—that is, essentially an episode or event" (internal quotation marks omitted)); *see also Solis-Rodriguez*, 144 F.4th at 624-26 (detailing § 922(g) cases where district court failed to mention potential applicability of ACCA at plea colloquy), that Mason has not made a sufficient showing that he would have proceeded to a trial absent the *Erlinger* error here.

The indictment to which Mason pled guilty alleged he had three ACCA-qualifying predicate violent felonies. In addition to providing the preponderance advice, the district court advised Mason during the guilty plea colloquy of his right to have a jury resolve beyond a reasonable doubt whether any prior violent felonies he had were committed on occasions different from one another. The court also informed Mason during the colloquy that, if he pled guilty, he faced a 15-year minimum prison term under the ACCA. The

factual basis document proffered by the Government alleged that Mason had three ACCA-qualifying predicate violent felonies, and Mason agreed during the colloquy that this document provided the factual basis for his guilty plea. The criminal history information in the indictment and the factual basis document make clear that the offenses undergirding Mason's three predicate convictions were separated by years' long gaps in time. Mason chose to plead guilty, never objected to the preponderance advice, and did not express any surprise at being faced with the 15-year minimum prison term at sentencing. Mason does not suggest—and the record, we conclude, does not support the conclusion that—but for the district court's preponderance advice, he would not have entered his guilty plea and would have exercised his jury trial right to argue that one or more of his predicate convictions were somehow part of the same episode or event. Accordingly, the *Erlinger* error here did not affect Mason's substantial rights.

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