NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-12182
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALEX WINTERS,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:21-cr-00018-TPB-KCD-1

Before JILL PRYOR, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

After a jury convicted appellant Alex Winters of possession of a firearm as a felon, possession with intent to distribute controlled substances, and possession of a firearm in furtherance of a

drug-trafficking crime, it imposed a total sentence of 480 months' imprisonment. On appeal, Winters argues that the Fifth Amendment's Double Jeopardy Clause bars his conviction and punishment for both the possession-of-a-firearm-in-furtherance-of-a-drug-trafficking crime and the predicate drug offense of possession with intent to distribute. He also challenges his sentence, arguing that the district court erroneously applied a career-offender enhancement. He raises both issues for the first time on appeal. After careful consideration, we affirm.

I.

In May 2020, law enforcement officers stopped a car after they saw it run a stop sign; Winters was a passenger in the car. During the stop, officers noticed Winters reaching down to the car's floorboard several times.

After smelling a marijuana odor coming from the car, the officers decided to search the vehicle. They found a firearm under the front passenger seat. Under that seat, they also discovered a bag containing marijuana, crack cocaine, cocaine, eutylone, eight rounds of ammunition, a digital scale, and a notebook with a ledger that recorded drug transactions.

A grand jury charged Winters with possession of a firearm and ammunition as a felon, in violation of 18 U.S.C. § 922(g)(1) (Count One); possession with intent to distribute cocaine, cocaine base, and eutylone, in violation of 21 U.S.C. § 841 (Count Two); and possession of a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. § 924(c) (Count Three). Winters

pleaded not guilty and proceeded to trial. A jury found him guilty of all three counts.

Before Winters's sentencing, a probation officer prepared a presentence investigation report ("PSR"). The PSR reported that Winters qualified as a career offender under the Sentencing Guidelines because his conviction in Count Two was for a felony that qualified as a controlled substance offense and he had two previous convictions for either a crime of violence or a controlled substance offense. *See* U.S. Sent'g Guidelines Manual § 4B1.1. The PSR identified three predicate convictions that qualified as crimes of violence or controlled substance offenses: (1) a 2009 Florida conviction for possession with intent to sell cocaine and sale or delivery of cocaine, (2) a 2010 Florida conviction for possession with intent to sell cocaine and sale or delivery of cocaine, and (3) a 2018 Florida conviction for aggravated battery with a deadly weapon.

At the sentencing hearing, Winters objected to the career-offender enhancement. He argued that his Florida cocaine convictions did not qualify as controlled substance offenses for career-offender purposes because Florida's definition of cocaine was broader than the federal definition of cocaine based on differences in how they treated the substance ioflupane. The district court rejected this challenge and applied the career-offender enhancement. It determined that under the career-offender guideline, Winters's guidelines range was 360 months to life. *See id.* § 4B1.1(c)(2).

The court ultimately imposed a total sentence of 480 months' imprisonment. This sentence consisted of: a 120-

month sentence on Count One, which was the applicable statutory maximum for possessing a firearm as a convicted felon;[1] a 240-month sentence on Count Two, which was the applicable statutory maximum for the drug offense; and a 120-month sentence on Count Three for possessing a firearm during a drug-trafficking crime. It directed that the sentences would run consecutively.

This is Winters's appeal.

II.

We ordinarily review *de novo* a defendant's double jeopardy challenge. *See United States v. Dorelus*, 154 F.4th 1349, 1353 (11th Cir. 2025). And we also ordinarily review *de novo* whether a defendant's previous conviction qualifies as a controlled substance offense for purposes of the career-offender enhancement. *See United States v. Pridgeon*, 853 F.3d 1192, 1198 n.1 (11th Cir. 2017).

But when a defendant raises an issue for the first time on appeal, we review for plain error only. *See United States v. Evans*, 478 F.3d 1332, 1338 (11th Cir. 2007). To establish plain error, a defendant must show: (1) an error, (2) that is "plain," (3) that "affects substantial rights," and (4) that "seriously affects the fairness, integrity, or public reputation of judicial proceedings." *United States v.*

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[1] The PSR reported that Winters also qualified as an armed career criminal and thus faced a statutory maximum sentence of life for Count One. *See* 18 U.S.C. § 924(e). But at his sentencing hearing, the government conceded that the Armed Career Criminal Act did not apply because a jury did not make a finding beyond a reasonable doubt that Winters's previous convictions occurred on different occasions. *See Erlinger v. United States*, 602 U.S. 821, 836 (2024).

Lejarde-Rada, 319 F.3d 1288, 1290 (11th Cir. 2003) (citation modified). "An error is not plain unless it is contrary to explicit statutory provisions or to on-point precedent in this Court or the Supreme Court." *United States v. Schultz*, 565 F.3d 1353, 1357 (11th Cir. 2009).

III.

We first consider Winters's double jeopardy challenge and then review his challenge to the career-offender enhancement.

A.

The Fifth Amendment's Double Jeopardy Clause provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. As we have recognized, it "protects a defendant against the imposition of multiple punishments for the same offense." *United States v. Dowd*, 451 F.3d 1244, 1251 (11th Cir. 2006). But "the Clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended." *Id.* (citation modified). Accordingly, "[i]f the statutes under which the defendant was sentenced specifically authorize cumulative punishments for the same offense, a court may impose cumulative punishment without running afoul of the Double Jeopardy Clause." *Id.* (citation modified).

Winters argues for the first time on appeal that the protection against double jeopardy was violated because his consecutive sentences for Count Two and Count Three punished him twice for the same offense. But he has not shown any error, let alone plain error.

Here, Winters received a 240-month sentence on Count Two for violating 21 U.S.C. § 841(a) by possessing with intent to distribute controlled substances. He also received a consecutive 120-month sentence on Count Three for possessing a firearm in the commission of a drug-trafficking crime, in violation of 18 U.S.C. § 924(c). When a defendant possesses a firearm during a drug-trafficking crime, § 924(c) directs that the defendant shall be sentenced to a term of imprisonment of at least five years. 18 U.S.C. § 924(c)(1)(A)(i). And it requires that this term run consecutively to any other term of imprisonment imposed. *Id.* § 924(c)(1)(D)(ii).

We have recognized previously that "[t]he language of 18 U.S.C. § 924(c) makes it clear that Congress intended [§] 924 to impose an additional . . . penalty on anyone convicted of a [predicate crime] who uses or carries a firearm in the commission of that crime." *United States v. Ricks*, 817 F.2d 692, 698 (11th Cir. 1987). "Because § 924(c) intentionally imposes a cumulative sentence," a district court does not violate the Double Jeopardy Clause when, as here, it imposes a sentence for the predicate crime and an additional consecutive sentence for the violation of § 924(c). *Dowd*, 451 F.3d at 1252. We are bound by our precedent, which forecloses Winters's double jeopardy challenge. *See United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008) (recognizing that a prior panel's holding "is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting en banc").

B.

We now turn to Winters's sentencing challenge. Congress created the Sentencing Commission and charged it with "establish[ing] sentencing policies and practices for the Federal criminal justice system." 28 U.S.C. § 991(b)(1). It assigned the Sentencing Commission the responsibility for promulgating and distributing to the courts sentencing guidelines and general policy statements. *Id.* § 994(a). But Congress did not give the Commission "unbounded discretion" when drafting the Sentencing Guidelines. *United States v. LaBonte*, 520 U.S. 751, 753 (1997). Instead, it set forth in § 994 "general goals for federal sentencing and imposed upon the Commission a variety of specific requirements." *Id.* (citing 28 U.S.C. § 994(b)–(n)). One of these specific requirements directed the Sentencing Commission to "assure that the Guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized for categories of defendants" when the defendant is convicted of a felony that is a "crime of violence" or "an offense described in" 21 U.S.C. §§ 841(a), 952(a), 955, or 959 or chapter 705 of title 46 and has "previously been convicted of two or more prior felonies, each of which is" either "a crime of violence" or "an offense described in" 21 U.S.C. §§ 841(a), 952(a), 955, or 959 or chapter 705 of title 46. 28 U.S.C. § 994(h).

The Sentencing Commission carried out this directive by promulgating the career-offender guideline. *See* U.S.S.G. §§ 4B1.1; 4B1.2. Under the career-offender guideline, a defendant qualifies as a career offender if: (1) he was at least 18 years old when he committed the instant offense; (2) the instant felony offense was either

a "crime of violence" or a "controlled substance offense"; and (3) he had at least two previous felony convictions for either "a crime of violence" or a "controlled substance offense." U.S.S.G. § 4B1.1(a). The Sentencing Guidelines further define a "controlled substance offense" as

> an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that . . . prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance . . . or the possession of a controlled substance . . . with intent to manufacture, import, export, distribute, or dispense.

Id. § 4B1.2(b). When a defendant qualifies as a career offender, the Guidelines direct that his offense level is based on the statutory maximum for his federal offense and he is assigned to criminal history category VI. *See id.* § 4B1.1(b).

Winters argues, for the first time on appeal, that the Sentencing Commission exceeded its authority when it promulgated the career-offender guideline. He points out that under the career-offender guideline a previous state conviction involving a controlled substance may qualify as a predicate conviction, but in § 994(h) Congress listed only ***federal*** crimes as predicate convictions. He asserts that the Sentencing Commission was required to follow the plain text of § 994(h) and thus lacked the authority to include convictions for controlled substance offenses under state law as predicate convictions for the career-offender guideline. We conclude that this challenge fails because Winters has not shown

that the district court plainly erred when it applied the career-offender enhancement.[2]

In arguing that the Sentencing Commission exceeded its authority, Winters primarily relies upon the Supreme Court's decision in *United States v. LaBonte*, 520 U.S. 751 (1997). In that case, the Supreme Court rejected the Commission's reading of another phrase in § 994(h): directing that the Commission craft a guideline "at or near the maximum term authorized" for certain repeat offenders. *Id*. at 752–53. In commentary to the Guidelines, the Commission interpreted this phrase to refer to the maximum sentence available before the application of any statutory repeat-offender enhancements. *Id*. at 754–55; *see* 21 U.S.C. §§ 841(b); 851. In *LaBonte*, the Supreme Court held that the Commission had exceeded its statutory authority in adopting the commentary. 520 U.S. at 758. The Court determined that the plain language of § 994(h) referred to the maximum prison term available for the offense of conviction

[2] We acknowledge that, in the district court, Winters challenged his career-offender status, but he raised a different issue. In the district court, he argued that his Florida drug convictions did not qualify as controlled substance offenses because of differences in how Florida law, at the time of his state convictions, and federal law, at the time of his federal firearm offenses, treated ioflupane. *See United States v. Miller*, 157 F.4th 1365, 1370 (11th Cir. 2025) (providing background on treatment of ioflupane as a type of cocaine under federal and Florida law). Because the career-offender issue that Winters raises on appeal is substantively different than the one he raised at sentencing, we review for plain error. *See United States v. Ramirez-Flores*, 743 F.3d 816, 821 (11th Cir. 2014) (applying plain-error review when the sentencing issue defendant raised on appeal was "substantively different" from the objection he raised at sentencing).

including any statutory sentencing enhancements. *Id.* In reaching this conclusion, the Court explained that, although Congress had "delegated to the Commission significant discretion in formulating guidelines for sentencing convicted federal offenders," the Commission still "must bow to the specific directives of Congress." *Id.* at 757 (citation modified).

After the Supreme Court's decision in *LaBonte*, we considered another case in which a defendant raised a different challenge to the career-offender guideline based on § 994(h). *See Pridgeon*, 853 F.3d at 1198–1200. In *Pridgeon*, the defendant argued that his previous Florida drug convictions did not qualify as controlled substance offenses under the career-offender guideline. *Id.* at 1197. He pointed out that the Florida statute under which he was convicted did not include as an element that the defendant knew the illicit nature of the controlled substance. *Id.* at 1197–98. He argued that the Commission exceeded its statutory authority under § 994(h) in promulgating the career-offender guideline by including offenses without such a *mens rea* element in the definition of controlled substance offense. *Id.*

We rejected this argument. *Id.* at 1199. We explained that the Commission's authority to promulgate the career-offender guideline did not come solely from § 994(h). Instead, we explained that § 994(a) also "provide[d] independent grounds for the career offender provision." *Id.* And we determined "§ 994(a) vest[ed] the Commission with authority to define 'controlled substance offense' to include crimes beyond those listed in § 994(h)." *Id.* at 1200.

Indeed, we recognized that under § 994(a), the Commission "enjoy[ed] significant discretion" to formulate Sentencing Guidelines. *Id.* (citation modified). As a result, we determined that the list of crimes in § 994(h) was not an "exclusive list of predicate crimes" for the career-offender enhancement and the Commission retained the authority to add crimes to the list. *Id.* Given the Commission's broad discretion to define predicate crimes, we concluded that it did not exceed its authority in promulgating the career-offender guideline. *Id.*

After considering the text of § 994 together with the Supreme Court's decision in *LaBonte* and our decision in *Pridgeon*, we cannot say that the district court plainly erred in treating Winters's Florida drug convictions as predicate offenses. Certainly, *LaBonte* recognized that the Commission must bow to, or follow, Congress's directives set forth in § 994. *See* 520 U.S. at 753–54. But Winters has not identified an explicit statutory provision or on-point precedent from this Court or the Supreme Court establishing that under § 994 a state drug conviction may not qualify as a career-offender predicate. Accordingly, Winters's sentencing challenge fails.

AFFIRMED.[3]

[3] We DENY Winters's motion to stay as moot.