

United States Court of Appeals
for the Fifth Circuit

No. 23-30454

United States Court of Appeals
Fifth Circuit

FILED

October 19, 2026

Thomas B. Plunkett, III
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DEVIN CHANEY,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:22-CR-16-1

ON REMAND FROM
THE SUPREME COURT OF THE UNITED STATES

Before SMITH, CLEMENT, and HIGGINSON, *Circuit Judges*.

JERRY E. SMITH, *Circuit Judge*:

The petition for rehearing is DENIED. The panel opinion, ___ F.4th ___, 2026 WL 2794484 (5th Cir. Sept. 18, 2026), is WITHDRAWN, and the following opinion is SUBSTITUTED:

* * * * *

Devin Chaney pleaded guilty of Hobbs Act Robbery in violation of 18 U.S.C. § 1951(a) and Armed Bank Robbery in violation of 18 U.S.C.

No. 23-30454

§ 2113(a) and (d). In the plea agreement, Chaney waived his right to appeal, except to appeal a sentence above the statutory maximum or to claim ineffective assistance of counsel. In exchange, the government dropped the remaining nine counts in the eleven-count indictment.

Despite the waiver, Chaney appealed his sentence on the ground that the district court improperly designated him as a career offender under U.S.S.G. § 4B1.1. We granted the government’s motion to dismiss the appeal because Chaney’s waiver was “knowing and voluntary” and “applie[d] to the circumstances at issue.” *United States v. Chaney*, 120 F.4th 1300, 1303 (5th Cir. 2024).¹ In so doing, we rejected Chaney’s argument that his plea agreement would result in a “miscarriage of justice” because this circuit had “not adopted a miscarriage-of-justice exception for appeal waivers.” *Id.*

In light of *Hunter v. United States* (*Hunter I*), 146 S. Ct. 1702 (2026), however, the Supreme Court granted Chaney’s petition for a writ of certiorari, vacated our judgment, and remanded. *Chaney v. United States*, 146 S. Ct. 2785 (2026). The Court in *Hunter I* declared that “an agreement not to appeal a sentence is unenforceable when it would result in a miscarriage of justice—meaning, when it would leave in place the kind of egregious error that would bring the judicial system into disrepute.” 146 S. Ct. at 1708.

Because Chaney has identified no such egregious error in his own sentence or sentencing process, we once again enforce his appeal waiver and dismiss the appeal.

¹ Quoting *United States v. Keele*, 755 F.3d 752, 754 (5th Cir. 2014) (quoting *United States v. Bond*, 414 F.3d 542, 544 (5th Cir. 2005)).

No. 23-30454

I.

The Supreme Court described its new “miscarriage of justice” exception as “a high bar,” *id.* at 1713, meant to operate only as a “safety valve for extreme cases,” *id.* at 1714. “The error must be obvious—not one a judge could reasonably make.” *Id.* at 1713. The Court offered several examples of cases that could meet the high bar:

First, a defendant may appeal a sentence exceeding what the relevant statute allows—most commonly, a term of years above the maximum prescribed. Second, a defendant may appeal 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). And third, a defendant may appeal if his sentence was imposed without some minimum of civilized procedure, as in, yes, the [trial by] twelve orangutans case—or less extravagantly, one in which the judge refused to hold a hearing consonant with basic principles of law.

Id. at 1714 (internal quotation marks and citations omitted).

On the other hand, the Court distinguished cases in which the “errors asserted are uncertain or ordinary.” *Id.* For example, because “[s]entencing is a complex affair in our criminal justice system, involving ... the detailed calculation of a Sentencing Guidelines range and the mandatory consideration of multiple sentencing factors . . . , it is unfortunate but inevitable mistakes will occur.” *Id.* at 1713. “Such standard-fare errors in misapplying sentencing law cannot cancel an appeal waiver.” *Id.*

II.

On remand, Chaney again asserts that the miscarriage-of-justice exception applies because the court erred by classifying him as a career offender under U.S.S.G. § 4B1.1. Chaney posits that his 2019 Louisiana con-

No. 23-30454

viction of distribution of a controlled dangerous substance does not qualify as a predicate controlled substance under § 4B1.1, given that the state marijuana offense included a prohibition on hemp and the federal marijuana offense did not. Chaney also maintains that the district court summarily overruled his objection without fairly adjudicating the issue. Neither asserted error, however, meets the high bar for miscarriage of justice set by *Hunter I*.

A.

In support of his theory that the district court committed egregious error, Chaney primarily relies on two non-precedential Fifth Circuit decisions that post-date Chaney's sentencing. See *United States v. Kimmons*, No. 25-30371, 2026 WL 1587522 (5th Cir. June 3, 2026) (unpublished); *United States v. Hill*, No. 24-30669, 2025 WL 2222989 (5th Cir. Aug. 5, 2025) (unpublished).

In both of those cases, the parties conceded—and the respective panels recognized—that the application of the career-offender enhancement to the same Louisiana offense was clear error. *Kimmons*, 2026 WL 1587522, at *3; *Hill*, 2025 WL 2222989, at *2. *Kimmons*, for example, held that “the district court clearly erred by applying the career-offender enhancement” to the defendant. *Kimmons*, 2026 WL 1587522, at *3.

But several details make those cases inapposite. First, both decisions are unpublished, meaning that neither binds this panel. *United States v. Hunter (Hunter II)*, 183 F.4th 416, 420 (5th Cir. 2026).

Second, this court's plain-error standard (as referenced by *Kimmons*) is not the same as *Hunter I*'s newly announced “miscarriage of justice” standard. *Hunter I*, 146 S. Ct. at 1713. Our panel opinions in the wake of *Hunter I* have said as much. Though “plain-error cases can provide a helpful starting point” and “can inform the obviousness inquiry, [] they do not

No. 23-30454

define *Hunter I*'s distinct waiver standard.” *United States v. Nyandoro*, No. 23-10579, ___ F.4th ___, 2026 WL 2619961, at *5 (5th Cir. Sept. 4, 2026) (citing *Hunter II*, 183 F.4th at 420, 423 (analogizing to plain-error cases)).

The same goes for the less burdensome “clear or obvious error” prong of the plain-error rubric (as referenced by *Hill*). Compare *Hunter II*, 183 F.4th at 420 (“[A]n error is clear or obvious only if it is apparent under controlling law and does not require an extension of precedent.”), with *Hunter I*, 146 S. Ct. at 1713–14 (defining a “miscarriage of justice” as implicating errors that are “extreme,” “egregious,” and “not one[s] a judge could reasonably make”).

Chaney has identified a clear or obvious error. This Court “define[s] ‘controlled substance,’ as used in the Guidelines, by looking to the definition supplied by the [federal Controlled Substances Act (CSA)].” *United States v. Minor*, 121 F.4th 1085, 1089 (5th Cir. 2024). Chaney’s 2019 Louisiana conviction of distribution of a controlled dangerous substance therefore does not qualify as a predicate controlled substance under § 4B1.1, given that the state marihuana offense included a prohibition on hemp and the federal marihuana offense did not.² Therefore, the district court erred by classifying Chaney as a career offender under U.S.S.G. § 4B1.1.

Nevertheless, that error does not amount to the kind of “extreme,” “obvious,” or “egregious error that would bring the judicial system into disrepute.” *Hunter I*, 146 S. Ct. at 1708, 1713–14. Indeed, the Supreme

² In the plain-error context, we assess obviousness “at the time of appellate consideration,” not “at the time of trial.” *Henderson v. United States*, 568 U.S. 266, 279 (2013) (cleaned up). *Hunter I* does not specify the relevant temporal benchmark for its miscarriage-of-justice inquiry, and we need not decide that question here. *Minor*, which was published after Chaney pled guilty, did not break new ground, instead applying prior Fifth Circuit precedent. See *United States v. Arayatano*, 980 F.3d 444, 453 n.8 (5th Cir. 2020); *United States v. Gomez-Alvarez*, 781 F.3d 787, 792–94 (5th Cir. 2015).

No. 23-30454

Court contemplated this very kind of claim when it discussed “unfortunate but inevitable” mistakes that may occur in “the detailed calculation of a Sentencing Guidelines range” and “multiple sentencing factors.” *Id.* at 1713. The Court explained that such a mistake does not meet the “high bar” of the new miscarriage-of-justice exception. *Id.*

B.

Chaney next urges that the “manner in which the court committed” the sentencing error constitutes a miscarriage of justice. That is so, Chaney reasons in a supplemental letter brief, because the district court “fail[ed] to apply sentencing law at all” and “summarily overruled his objection based solely on a Probation Officer’s . . . assertion that it was wrong.”

Hunter I did identify procedural deficiency as a potential avenue for a miscarriage-of-justice exception, but only where the “sentence was imposed without some minimum of civilized procedure.” *Hunter I*, 146 S. Ct. at 1714 (internal quotation marks omitted). The alleged procedural error that Chaney asserts, even if so, does not come close to clearing that bar.

Chaney was given the opportunity to object to his sentencing classification and to provide a justification for that objection. Ultimately, the district court disagreed. The fact that the court quickly came to a conclusion that Chaney considers erroneous does not mean that the sentencing process was done “without some minimum of civilized procedure.” *Id.* (internal quotation marks omitted).³ This is not one of those rare cases that would “bring the judicial system into disrepute[,]” “undermine public confidence in the

³ See *Wright v. Admin. Rev. Bd.*, U.S. Dep’t of Lab., 836 F. App’x 248, 257 (5th Cir. 2020) (“Insisting upon haste in judicial proceedings is generally not indicative of prejudicial bias.”); *N.Y. Times Co. v. United States*, 403 U.S. 713, 749 (1971) (BURGER, C.J., dissenting) (“But prompt judicial action does not mean unjudicial haste.”).

No. 23-30454

judiciary[,]” or threaten the “basic integrity” of the judicial system. *Id.* at 1713–14.

III.

Hunter I set a demanding standard for the Supreme Court’s newly announced “miscarriage of justice” exception to appeal waivers. It described that standard as a “high bar” reserved only for “extreme[,]” “obvious[,]” and “egregious” errors. *Id.* In the wake of *Hunter I*, we have had several opportunities to determine just how high that bar really is. Each time, we have emphasized the same point the *Hunter I* majority did: Run-of-the-mill or “standard-fare” errors in sentencing don’t make the cut.⁴

Under *Hunter I* and this court’s decisions that have followed, this case isn’t even close. We once again enforce Chaney’s appeal waiver and DISMISS the appeal.

⁴ See *Hunter II*, 183 F.4th at 418–20 (applying the new miscarriage-of-justice exception on remand and dismissing the appeal); *United States v. London*, 186 F.4th 884 (5th Cir. 2026) (same), *petition for cert. filed* (Aug. 21, 2026) (No. 26-5834); *Nyandoro*, 2026 WL 2619961, at *6–7 (same).