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No. 25-2153

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. TRISTAN MURPHY, aka Tristian Murphy, Defendant-Appellant.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN OPINION

Before: GIBBONS, LARSEN, and RITZ, Circuit Judges.

LARSEN, Circuit Judge. Tristan Murphy pleaded guilty to conspiring with others to commit Hobbs Act robbery. The district court sentenced him to 37 months' imprisonment and a 3-year term of supervised release. But Murphy violated the terms of his release. In calculating his sentence at a supervised-release hearing, the district court concluded that Murphy fell within criminal history category III—the same category that the district court had applied at Murphy's original sentencing. According to Murphy, though, the district court erred in deferring to commentary to the United States Sentencing Guidelines (U.S.S.G.) and in declining to apply a November 2023 Guidelines amendment, which, if given effect at the supervised-release hearing, would have resulted in a criminal history category of II and a reduced Guidelines range. As a result, Murphy contends that he is entitled to resentencing. For the reasons stated, we disagree and AFFIRM.

I.

In June 2019, Tristan Murphy and his coconspirators traveled from Michigan to Florida, where they planned to rob a jewelry store. After gaining entry, Murphy forced the store's employees and customers to the ground, while the others scoured the store for merchandise to steal. But before they could seize the loot, police officers arrived, foiling the plan. On April 29, 2021, Murphy pleaded guilty in the Eastern District of Michigan to conspiracy to commit Hobbs Act robbery. *See* 18 U.S.C. § 1951(a).

At sentencing, the district court calculated Murphy's criminal history score, as required by the Guidelines. Murphy had 2 prior convictions, giving him 2 criminal history points. But because Murphy was on probation when he committed the conspiracy offense, the then-effective version of the Guidelines directed the district court to "[a]dd 2 points" to his score. U.S.S.G. § 4A1.1(d) (2018). That raised Murphy's criminal history score to 4, which placed him into criminal history category III. When combined with his offense level of 17, Murphy's Guidelines range was 30 to 37 months. The district court sentenced him to 37 months in prison followed by a 3-year term of supervised release.

Murphy's term of supervised release began in February 2022. But, on June 11, 2024, some 8 months before his release term expired, police officers in West Virginia found Murphy driving on a suspended license. A search of his vehicle yielded 3 firearms, 21 grams of marijuana, and cash. The next day, Murphy's probation officer charged him with violating his supervised release by (1) committing another federal, state, or local crime; (2) knowingly leaving the Eastern District of Michigan without permission; and (3) possessing a firearm. Separately, Murphy pleaded guilty to a felon-in-possession charge in the Southern District of West Virginia. He received a 35-month prison term, which he is now serving.

Back in the Eastern District of Michigan, the district court found by a preponderance of the evidence that Murphy had committed the 3 charged violations. The court then turned to sentencing. But there was a wrinkle. As already noted, Murphy had previously received 2 criminal history points under the then-effective version of the Guidelines. That version had directed the district court to add 2 points because Murphy conspired to commit Hobbs Act robbery while on probation. But, as the government correctly explained, the Guidelines had since "been amended to eliminate that two-level enhancement." R. 586, Supervised Release Hr'g Tr., PageID 5197. As amended, the Guidelines direct district courts to add just "1 point" if the defendant "committed the instant offense while under any criminal justice sentence, including probation," and only "if the defendant [otherwise] receives 7 or more points under [U.S.S.G. § 4A1.1(a)–(d)]." U.S.S.G. § 4A1.1(e). The government took the view that the amendment—Amendment 821, which became effective November 1, 2023—should reduce Murphy's criminal history score for purposes of his supervised-release sentence because he had not accumulated 7 or more points under subsections (a)–(d).

The government did acknowledge, however, that its position departed from Application Note 1 to U.S.S.G. § 7C1.5. Section 7C1.5, which contains language that has been part of the Guidelines since 1990,[1] says that the criminal history category to be used for purposes of a supervised-release sentence "is the category applicable at the time the defendant originally was

[1] Section 7C1.5 itself was promulgated in the November 2025 amendment to the Guidelines. Prior versions of the Guidelines treated both probation violations and supervised-release violations in a single table. *See, e.g.*, U.S.S.G. § 7B1.4 (1990). But the November 2025 amendment split the chapter into two parts, creating separate but substantially similar tables for probation violations, *see* U.S.S.G. § 7B1.4(a), and supervised-release violations, *see id.* § 7C1.5. Both tables contain the language at issue here.

sentenced to a term of supervised release."[2] Application Note 1 says the same thing with some small and semantically unimportant variations. *See* U.S.S.G. § 7C1.5 cmt. n.1. And an example recently added to the Application Note expressly flags Amendment 821 as a Guidelines provision that should *not* reduce a criminal defendant's criminal history category for purposes of a supervised-release violation.[3] *See id.* The government nonetheless argued that Amendment 821 should control Murphy's sentence. When the district court asked for Murphy's position, his counsel said that he "would go with the lower number." R. 586, Supervised Release Hr'g Tr., PageID 5199.

The district court ultimately rejected the parties' joint position. The court explained that it would "follow the application note because that is the pronouncement of the Sentencing Commission about how these guidelines should be interpreted." *Id.* at 5205. That meant that Murphy's Guidelines range was 18 to 24 months, rather than the 15-to-21-month range that would have applied under Amendment 821. The district court opted for the low end of the range and sentenced Murphy to 18 months' imprisonment, to run consecutively to his West Virginia sentence. Murphy appealed.

[2] Section 7C1.5 lays out, in table format, "the recommended range of imprisonment applicable upon revocation" of a criminal defendant's term of supervised release. The table itself instructs that "[t]he criminal history category is the category applicable at the time the defendant originally was sentenced to a term of supervised release." U.S.S.G. § 7C1.5. Critically, this sentence appears in the body of the policy statement. *See* infra Part II.B. And it is reiterated in the commentary. *See* U.S.S.G. § 7C1.5 cmt. n.1.

[3] This example was not added to the Application Note in Amendment 821. Rather, the Sentencing Commission added the example in Amendment 835, which went into effect on November 1, 2025—about five weeks before Murphy's sentencing.

II.

The sole issue on appeal is whether the district court erred in declining to apply Amendment 821 at Murphy's supervised-release hearing. More narrowly, Murphy contends that the district court erred in deferring to Application Note 1 to U.S.S.G. § 7C1.5.

A.

At the outset, we address the parties' dispute about the standard of review. "Typically, '[w]e review a district court's revocation of supervised release for an abuse of discretion, its factual findings for clear error, and its legal conclusions *de novo*.'" *United States v. Hoyle*, 148 F.4th 396, 402 (6th Cir. 2025) (quoting *United States v. Williams*, 858 F. App'x 827, 829–30 (6th Cir. 2021)). Whether Amendment 821 governs Murphy's sentence is a legal question subject to de novo review. But the government says that plain error review applies here because Murphy offered only a "general objection" to the district court's Guidelines calculation. Appellee Br. at 7.

We disagree. Although we review unpreserved issues for plain error, *see United States v. Prather*, 138 F.4th 963, 970 (6th Cir. 2025), Murphy adequately preserved the issue in district court. Murphy's trial counsel's remarks on this front were, to be sure, rather terse. But, in context, it's clear that Murphy's expressed desire to "go with the lower number" was adopting the government's position—i.e., that the district court should not defer to the Application Note and should apply Amendment 821 instead. R. 586, Supervised Release Hr'g Tr., PageID 5199. The district court also ruled on the matter. And "we normally refuse to find forfeiture when a district court addresses the merits of the issue." *United States v. Liggins*, 167 F.4th 894, 904 (6th Cir. 2026) (citation modified). So we will review Murphy's argument de novo.[4]

[4] Relatedly, Murphy contends that the government has waived its arguments on appeal by taking a contrary position in the proceedings below. But as we noted in the very case that Murphy selectively quotes, "even if some form of that argument could restrict the government here that

B.

Section 7C1.5 of the Guidelines declares that for purposes of a supervised-release sentence, a defendant's "criminal history category is the category applicable at the time the defendant originally was sentenced to a term of supervised release." Application Note 1 reiterates this command and then adds an "example," which explains that Amendment 821 does not affect a criminal defendant's criminal history category for purposes of a supervised-release violation, "regardless of whether the defendant's criminal history category would be reduced for other purposes." U.S.S.G. § 7C1.5 cmt. n.1. The parties agree that the framework announced in *United States v. Riccardi*, 989 F.3d 476 (6th Cir. 2021), governs whether we should defer to the Application Note.[5]

Riccardi held that we should defer to the Sentencing Commission's Guidelines commentary only when certain conditions are met.[6] *See id.* at 486. First, the Guidelines text "must

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does not mean that [Murphy] simply wins. He is appealing a district court's sentencing decision, and we must review that decision on appeal, not the government's arguments below." *United States v. Cadieux*, 846 F. App'x 389, 394 n.4 (6th Cir. 2021).

[5] The Guidelines Manual "contains text of three varieties": (1) Guidelines provisions, (2) policy statements, and (3) and commentary. *Stinson v. United States*, 508 U.S. 36, 41 (1993). Section 7C1.5 is a policy statement, not a Guideline. Murphy contends that *Riccardi* applies to the Sentencing Commission's policy statements just as it applies to Guidelines provisions, and the government agrees. Absent a live dispute about the issue, we assume, without deciding, that the parties are correct. We also note, however, that even if the parties are wrong about that assumption, it would not change the outcome here. If *Riccardi* does not apply, then both the policy statement and the commentary are fair game in the interpretive inquiry. And for the reasons explained below, nothing about the policy statement or commentary supports Murphy's position.

[6] In so holding, *Riccardi* followed the Supreme Court's clarification of *Auer* deference, announced in *Kisor v. Wilkie*. *See* 588 U.S. 558 (2019). And it declined to mechanically apply the Supreme Court's earlier decision in *Stinson*, which had held that "commentary in the Guidelines Manual that interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline." 508 U.S. at 38. The Supreme Court recently granted certiorari to consider *Stinson*'s continuing vitality. *See Beaird v. United States*, 146 S. Ct. 2553 (2026) (mem.).

be 'genuinely ambiguous' after we 'exhaust all the traditional tools of construction,' including analyzing the regulation's 'text, structure, history, and purpose.'" *United States v. You*, 74 F.4th 378, 397 (6th Cir. 2023) (quoting *Kisor v. Wilkie*, 588 U.S. 558, 575 (2019)) (citation modified). "In that hierarchy, text is paramount." *United States v. Phillips*, 54 F.4th 374, 387 (6th Cir. 2022) (Larsen, J., concurring in the judgment). "Second, if the regulation is ambiguous, the [Sentencing Commission's] reading must fall within its 'zone of ambiguity.'" *You*, 74 F.4th at 397. And third, we must "decide whether the 'character and context' of the reading entitle it to deference." *Id.* To clear that hurdle, the Sentencing Commission's interpretation must "implicate [the Sentencing Commission's] substantive expertise" and "reflect 'fair and considered judgment.'" *Id.* (citation modified).

Murphy's principal argument on appeal is that the district court erred in deferring to U.S.S.G. § 7C1.5 Application Note 1. And admittedly, he has a point. At the supervised-release hearing, the district court deferred to "the pronouncement of the Sentencing Commission about how the[] guidelines should be interpreted" before applying the traditional tools of statutory interpretation to determine whether the operative text is ambiguous. R. 586, Supervised Release Hr'g Tr., PageID 5205. That approach was inconsistent with the *Riccardi* framework laid out above.

But that does not mean Murphy's argument carries the day. Applying the *Riccardi* framework, we conclude that Murphy's original criminal history category applies. In Murphy's view, "the 'single, best meaning' of Section 7C1.5 based on its 'text, structure, history, and purpose,'" establishes that Murphy is entitled to a lower criminal history category. Appellant Br. at 25 (citation omitted). But considering those same interpretive modalities, we come to the opposite conclusion without deference to the Guidelines commentary. "And we can affirm on any

grounds supported by the record, even if different from the reasons of the district court." *United States v. Abdullah*, 119 F.4th 496, 498 (6th Cir. 2024).

We start, and largely end, with the text. As noted, § 7C1.5 provides that "[t]he criminal history category is the category applicable at the time the defendant originally was sentenced to a term of supervised release." Nothing about these words is ambiguous. As § 7C1.5 itself puts beyond dispute, the term "criminal history category" refers to the various categories laid out along the horizontal axis of the table provided in § 7C1.5. Section 4A1.1 reinforces the point. There, the Guidelines instruct that the "[t]he total points from subsections (a) through (e) determine the criminal history category in the Sentencing Table." U.S.S.G. § 4A1.1. So, as a textual matter, there is no doubt that that the term "criminal history category" refers to the six categories enumerated across the horizontal axis of "the Sentencing Table." *Id.*

What's more, § 7C1.5's language directs courts to use "[t]he criminal history category . . . applicable at the time the defendant originally was sentenced to a term of supervised release." U.S.S.G. § 7C1.5. We give these terms their "ordinary meaning" and interpret them "in their context." *Enriquez-Perdomo v. Newman*, 54 F.4th 855, 863 (6th Cir. 2022) (quoting *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 455 (2022)). Against that backdrop, the upshot is plain: the criminal history category that applied at the original sentencing applies at the post-revocation sentencing too.

Murphy focuses on neither provision discussed above. Instead, he trains his analysis on U.S.S.G. § 1B1.11(a). Section 1B1.11(a) requires courts to "use the Guidelines Manual in effect on the date that the defendant is sentenced." But this language does not indicate that Amendment 821 applies to Murphy's post-revocation supervised-release sentence.

Murphy contends that applying his original criminal history category would be inconsistent with § 1B1.11(a) because, in so doing, we would be "applying an outdated version of the Guidelines." Appellant Br. at 14. In other words, he argues that, on the facts here, applying his original *criminal history category* is tantamount to applying the version of the *Guidelines Manual* in effect at the time of his original sentence. But that's not so. The *current* version of the Guidelines Manual expressly directs courts to apply "the category applicable at the time the defendant originally was sentenced to a term of supervised release." U.S.S.G. § 7C1.5. As the Eleventh Circuit explained in rejecting this argument, Murphy could perhaps file a motion under 18 U.S.C. § 3582(c)(2) "seek[ing] to be *re*-sentenced with a reduced criminal history category, but the retroactive amendment did not change his category at the time he was *originally* sentenced." *United States v. Bodiford*, No. 24-12646, 2025 WL 1276100, at *4 (11th Cir. May 2, 2025) (per curiam).[7] So, consistent with § 1B1.11(a), our reading of § 7C1.5 adheres to the current version of the Guidelines Manual.

That conclusion undermines several of Murphy's other arguments. For example, Murphy asserts that, when the Sentencing Commission instructs courts to depart from § 1B1.11(a)'s directive, "it does so explicitly." Appellant Br. at 20 (collecting authorities). But even accepting Murphy's premise as true, the conclusion he seeks does not follow. For the reasons we have explained, we do not depart from § 1B1.11(a)'s requirements in reading § 7C1.5 as we do.

Murphy further suggests that our reading of § 7C1.5 generates an internal conflict between § 1B1.11(a) and § 7C1.5. To avoid it, Murphy says that we should instead read § 7C1.5 to

[7] Because *Bodiford* was decided before the November 2025 amendment's effective date, the Eleventh Circuit relied on § 7B1.4(a), which, at the time, governed both probation violations and supervised-release violations. *See supra* note 1. But *Bodiford*'s point applies to § 7C1.5 with equal force. And, of course, we express no view on Murphy's eligibility for resentencing under § 3582(c)(2) or the success of any such motion.

"govern[] what historical facts are considered in calculating an offender's criminal history" and read § 1B1.11(a) to "govern[] which law applies." Appellant Br. at 21. We have no quibble with the latter point. But even putting aside the falsity of Murphy's underlying premise—i.e., that there's a conflict to resolve here in the first place—§ 7C1.5's text cannot bear Murphy's interpretation. Again, "criminal history category" unambiguously refers to the categories laid out along the horizontal axis of the table provided in § 7C1.5, not the "historical facts" that inform which category applies to a particular criminal defendant. *Id.* Thus, to the extent that Murphy relies on text and structure to support his view that the Guidelines unambiguously favor a reduced criminal history category, his arguments do not persuade.

Murphy devotes the better part of his briefing to history and purpose. But neither alters the conclusions we draw from § 7C1.5's text and its relationship with the other Guidelines provisions addressed above.

To explain: Murphy offers a potted history of the Sentencing Commission's deliberative process in promulgating U.S.S.G. Chapter 7 over thirty years ago. To that end, he provides a long block quote from the Sentencing Commission's request for comment on "'[t]wo options' for 'guidelines for revocation of probation and supervised release.'" Appellant Br. at 16 (quoting Sentencing Guidelines for United States Courts, 55 Fed. Reg. 5718, 5745 (Feb. 16, 1990)). In full, that quote reads:

> Under Option 1, violations of probation and supervised release would be divided into three grades, with a different guideline range for each. In the case of a conviction for a new offense committed on probation or supervised release, the court would impose the revocation penalty to run consecutively to any penalty imposed for the new offense by a federal, state, or local court. The revocation penalty would be a separate penalty and the guidelines would not attempt to coordinate the revocation penalty with the penalty for the new offense. Under Option 2, in contrast, the court would in the case of a finding of new criminal conduct be directed to apply the guideline system exactly as if the defendant had been convicted of that new criminal conduct in federal court and recalculate the

> criminal history score (e.g., the revocation offense would be treated as the instant offense, and the offense resulting in probation or supervised release would be treated as prior criminal history).

55 Fed. Reg. at 5745–46. According to Murphy, the Sentencing Commission rejected option 2 "[a]fter extensive public comment and internal debate." Appellant Br. at 17 (citation modified). Murphy explains that judges, probation officers, and ultimately, the Sentencing Commission, had reservations about an approach to violation hearings that would essentially "federalize[] local and state crimes" in proceedings where the criminal defendant is judged by a preponderance standard, frequently on "insufficient" factual records. *Id.* (citation modified).

How does all that bear on the instant matter? Murphy argues that, in rejecting option 2, the Sentencing Commission declined an approach to post-revocation sentencing that would have required a defendant's criminal history to be "recalculated to determine the appropriate revocation sentence." *Id.* at 18 (citation modified). It was in that "specific context" that the Sentencing Commission first articulated the language that today forms the key part of § 7C1.5. *Id.* at 18–19. And that context supposedly shows that the Sentencing Commission was simply directing courts to refrain from assigning criminal history points to the violation conduct. *Id.* at 19. Thus, Murphy says, "historical context" and the purpose gleaned from that context indicate that § 7C1.5 "does not require the district court to apply an outdated version of the Guidelines Manual." *Id.*

But there are a few problems with Murphy's position. To start, even accepting Murphy's account of the underlying history of U.S.S.G. Chapter 7 (and to be clear, we offer no view as to its veracity), it is irrelevant. Nothing about the chapter's history, as Murphy tells it, suggests that the Sentencing Commission intended courts to read § 7C1.5 in the narrow way he proposes. To the contrary, his own sources state that Chapter 7 proceedings "adopt[] the criminal history category from the original sentencing." Sharon O. Henegan, *Revocation of Probation & Supervised*

Release: A Commission Perspective, 6 Fed. Sent'g Rep. 199, 199 (1994). And ironically, it is Murphy who seeks a "recalculation" of his Guidelines—an outcome that his own history-and-purpose analysis purports to rule out. Appellant Br. at 18–19. Further, even if Chapter 7's history and purpose did weigh in favor of recalculation, that would lead, at most, to a finding that § 7C1.5 is ambiguous given our view of the provision's text and its relationship to related Guidelines provisions. *See supra*. But, far from rescuing Murphy's position, that result would likely lead us to defer to Application Note 1, *see Kisor*, 588 U.S. at 574–76; *You*, 74 F.4th at 397, which, as of November 2025, expressly covered cases like this one, U.S.S.G. § 7C1.5 cmt. n.1. Either way, then, Murphy's position lacks merit.

Murphy also refers to a handful of cases to make the same point. Shorn of context, some language in those cases could be read to support Murphy's position. *See United States v. McKinney*, 520 F.3d 425, 431 (5th Cir. 2008) ("[W]e read this direction in [a prior version of] note 1 merely to inform district courts that the supervised release violation is not to be included in the calculation of the defendant's aggregate criminal history points under § 4A1.1."); *United States v. Collins*, 859 F.3d 1207, 1220 n.11 (10th Cir. 2017) (noting that a defendant's criminal history category is "not affected by the offense of conviction itself" (emphasis omitted)). But neither *McKinney* nor *Collins* considered the issue presented here, and nothing about those decisions leads us to reconsider our analysis above. What's more, the Fifth Circuit recently concluded that Amendment 821 does not apply at revocation hearings, albeit without applying the *Riccardi*-type analysis we perform here. *See United States v. Grant*, Nos. 25-30008, 25-30009, 2026 WL 323160, at *3 (5th Cir. Feb. 6, 2026) (per curiam). And the Tenth Circuit has said something similar, albeit in unpublished dicta. *See United States v. Mertlich*, No. 25-4147, 2026 WL 2253752, at *1 n.1 (10th Cir. Aug. 5, 2026) (order). That leaves *United States v. McNeal*—an

unpublished, out-of-circuit district court opinion that concluded that Amendment 821 "should apply to the calculation of [the] criminal history category for purposes of [a] revocation hearing." No. 2:20-cr-00099, 2025 WL 104551, at *4 (S.D. W. Va. Jan. 15, 2025). We find this nonbinding case unpersuasive. *McNeal* engaged only superficially with the pertinent text before deferring to a now-outdated version of application note 1 without any *Kisor* analysis. *See id.* at *3–4; *supra* note 3. And the result we reach today is more consistent with our own unpublished caselaw, which has found neither error, *United States v. Nelson*, No. 24-1290, 2024 U.S. App. LEXIS 17733, at *6–7 (6th Cir. July 18, 2024) (order), nor plain error, *see United States v. Grove*, No. 24-5298, 2025 WL 655581, at *5 (6th Cir. Feb. 28, 2025), in a district court's decision to apply a criminal defendant's original criminal history category notwithstanding Amendment 821.

In sum, then, Murphy has not demonstrated that he is entitled to resentencing.

* * *

We AFFIRM.