

January 2022 Brown Bag
Summaries of Recent Criminal Decisions
by the United States Court of Appeals for the
Eleventh Circuit

[*United States v. Moore*, --- F.4th ---, 2022 WL 122746 \(11th Cir. Jan. 13, 2022\)](#) (The Court vacated the supervised release portion of Mr. Moore’s third revocation sentence. The district court plainly erred under 18 U.S.C. § 3583(h) and *United States v. Mazarky*, 499 F.3d 1246 (11th Cir. 2007), by imposing an additional term of supervised release when Mr. Moore had already served a term of imprisonment for prior revocations in excess of the statutory maximum amount of supervised release. As to the imprisonment portion of the sentence, the Court affirmed under plain error review. Judge Newsom dissented in part, writing that he believed that the imprisonment portion of the revocation sentence plainly violated the Fifth and Sixth Amendments inasmuch as it exceeded the statutory maximum of 13 years (10 for underlying offense and 3 for supervised release).)

[*United States v. Smith*, --- F.4th ---, 2022 WL 110230 \(11th Cir. Jan. 12, 2022\)](#) (The Court vacated Mr. Smith’s conviction for theft of trade secrets and related sentencing enhancements for lack of venue, affirmed the extortion conviction and related sentencing enhancements, and remanded for resentencing. Venue was improper in the Northern District of Florida because Mr. Smith never committed any essential conduct in that location. The Court declined to adopt the government’s effects-of-the-crime argument. The Court also noted that the remedy for improper venue is vacatur of the conviction, not acquittal or dismissal with prejudice, and double jeopardy would not preclude a retrial in the proper venue.)

[*United States v. Sharp*, --- F.4th ---, 2021 WL 6123326 \(Dec. 28, 2021\) \(*Wilson, Lagoa, Martinez* \(S.D. Fla.\)\)](#) (The Court, in a government appeal, vacated the district court’s non-ACCA sentence and remanded for re-sentencing. In light of an intervening change in the law, the government did not waive its ability to rely on a conviction for ACCA purposes by failing to rely on it at sentencing. The Court found it to be “too far a

stretch” to require the government to object to binding precedent or anticipate future changes in the law.)

[United States v. Fleury, 20 F.4th 1353 \(11th Cir. 2021\) \(Wilson, Rosenbaum, Hull\)](#) (The Court affirmed Mr. Fleury’s convictions for transmitting interstate threats and cyberstalking. The Court rejected his facial and as-applied First Amendment challenges to the cyberstalking statute. The Court also held that the indictment sufficiently charged the cyberstalking counts because it tracked the statutory language and otherwise provided adequate notice of the charges.)