

No. \_\_\_-\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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TIMOTHY SCOTT HARDIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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**APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE  
A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FOURTH CIRCUIT**

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To the Honorable John G. Roberts, Jr., Chief Justice of the United States and  
Circuit Justice for the Fourth Circuit:

Under 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30 of this Court, petitioner  
Timothy Scott Hardin respectfully requests a 30-day extension of time, up to and  
including August 14, 2024, in which to file a petition for a writ of certiorari in this  
Court. The Fourth Circuit entered final judgment against Hardin on April 19, 2024,  
and denied his timely rehearing petition on April 16, 2024. Without an extension,  
Hardin's time to file a petition for certiorari in this Court expires on July 15, 2024.  
This application is being filed more than 10 days before that date. A copy of the

Fourth Circuit’s unpublished opinion in this case is attached as Exhibit 1, and a copy of the Fourth Circuit’s denial of the petition for rehearing *en banc* is attached as Exhibit 2. This Court has jurisdiction under 28 U.S.C. § 1254(1).

This case presents a recurring issue of great importance involving the interpretation of 18 U.S.C. § 2252A(b)(1)’s recidivist enhancement. Specifically, the district court concluded that the enhancement applied based on Hardin’s prior conviction for a Tennessee statutory rape offense. That decision raised the statutory minimum from five years to 15 years, and the district court imposed a sentence equal to the 15-year minimum. A divided panel of the Fourth Circuit affirmed in a decision that created a direct conflict with *United States v. Jaycox*, 962 F.3d 1066 (9th Cir. 2020), on the specific question whether the Section 2252A enhancement is triggered by a non-generic statutory rape offense that sets the age of consent at 18, rather than 16. After the Fourth Circuit issued its initial decision in this case (before a remand for unrelated purposes), the Fifth Circuit joined this specific split in a decision that agrees with the Fourth Circuit. *See United States v. Grzywinski*, 57 F.4th 237 (5th Cir. 2023). More generally, the circuit courts have continued to struggle with related questions about the meaning of § 2252A’s language in the context of other types of convictions. *See, e.g., United States v. Leistman*, 97 F.4th 1054, 1062 (7th Cir. 2024) (six-to-five en banc opinion, noting existence of a three-to-two circuit conflict about the meaning of “relating to” within the statute).

In addition to preparing this petition, counsel is also responsible for meeting deadlines in numerous other cases, including *United States v. Moody*, Fourth Circuit No. 23-6319 (oral argument held May 7, 2024); *United States v. Whisenant*, Fourth Circuit No. 24-4074 (opening brief due June 28, 2024); *United States v. Edwards*, Fourth Circuit No. 24-4202 (opening brief due July 5, 2024); *United States v. Glass*, Fourth Circuit No. 24-4193 (opening brief due July 5, 2024); and *United States v. Castillo*, Fourth Circuit No. 20-6767 (petition for writ of certiorari due July 25, 2024).

For these reasons, counsel respectfully requests that an order be entered extending the time to petition for certiorari up to and including August 14, 2024.

Respectfully submitted,

John G. Baker  
FEDERAL PUBLIC DEFENDER FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA

/s/Joshua B. Carpenter  
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June 21, 2024

**Exhibit 1**

*United States*

v.

*Hardin,*

2024 WL 1171205

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 22-4432**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TIMOTHY SCOTT HARDIN,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at Statesville. Kenneth D. Bell, District Judge. (5:18-cr-00025-KDB-DCK-1)

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Submitted: February 28, 2024

Decided: March 19, 2024

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Before WYNN, THACKER, and QUATTLEBAUM, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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**ON BRIEF:** John G. Baker, Federal Public Defender, Charlotte, North Carolina, Joshua B. Carpenter, Appellate Chief, FEDERAL DEFENDERS OF WESTERN NORTH CAROLINA, INC., Asheville, North Carolina, for Appellant. Anthony Joseph Enright, Assistant United States Attorney, Charlotte, North Carolina, Amy Elizabeth Ray, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Asheville, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM.

Timothy Scott Hardin pled guilty to a single count of receiving child pornography, in violation of 18 U.S.C. § 2252A(a)(2). The district court sentenced Hardin to 180 months' imprisonment, to be followed by a lifetime term of supervised release. In Hardin's initial appeal, we rejected Hardin's challenge to the application of the recidivist enhancement set forth in 18 U.S.C. § 2252A(b)(1) but vacated the judgment in part as related to the supervised release term. *See United States v. Hardin*, 998 F.3d 582 (4th Cir. 2021) ("*Hardin I*"). The United States Supreme Court denied Hardin's petition for a writ of certiorari from this decision. *See Hardin v. United States*, 142 S. Ct. 779 (2022).

On remand, the district court granted the parties' joint motion to amend the criminal judgment to reflect the court's later-issued standing orders related to the supervised release terms applicable to sex offenders. Hardin timely appeals the amended criminal judgment, which was entered as consistent with this joint motion.

In his appellate brief, which is filed pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel for Hardin reasserts the same argument related to the recidivist sentencing enhancement that we rejected in *Hardin I*. Counsel concedes, however, that this argument is foreclosed by our decision in *Hardin I*. This concession accurately reflects the law in this circuit. *See United States v. Dodge*, 963 F.3d 379, 383 (4th Cir. 2020) (explaining that a panel of this court is "precluded from overruling" another decision of this court); *see, e.g., Payne v. Taslimi*, 998 F.3d 648, 654 n.2 (4th Cir. 2021) ("[W]e must follow a prior panel decision even if it had abysmal reasoning, put forward unworkable commands, engendered no reliance interests, lacked consistency with other decisions, and has been

undermined by later developments.”). Further, because we denied Hardin’s petition to hear the current appeal en banc, and the Supreme Court denied certiorari as related to *Hardin I*, there simply is no mechanism for this argument to succeed. *See McMellon v. United States*, 387 F.3d 329, 332-34 (4th Cir. 2004) (en banc) (recognizing established principle that a decision by a three-judge panel of this court remains binding “unless and until it is overruled by this court sitting en banc or by the Supreme Court”). Accordingly, we hold that *Hardin I* forecloses our consideration of the lone issue raised in the *Anders* brief.\* Further, our review pursuant to *Anders* did not reveal any nonfrivolous grounds for appeal.

We therefore affirm the amended criminal judgment. This court requires that counsel inform Hardin, in writing, of the right to petition the Supreme Court of the United States for further review. If he 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 Hardin. 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*

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\* Although notified of his right to do so, Hardin has not filed a pro se supplemental brief.

## Exhibit 2

Denial of petition for panel rehearing and rehearing en banc entered in  
*United States v. Hardin*, Fourth Circuit No. 22-4432



FILED: April 16, 2024

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 22-4432  
(5:18-cr-00025-KDB-DCK-1)

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

TIMOTHY SCOTT HARDIN

Defendant - Appellant

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O R D E R

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The petition for rehearing en banc was circulated to the full court. No judge requested a poll under [Fed. R. App. P. 35](#). The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk