

No error to deny credit for time spent at liberty due to erroneous early release from custody.

[*U.S. v. Grant*](#), ___ F.3d ___ 2017 WL 2871372 (4th Cir. July 6, 2017). The defendant was convicted of drug possession in federal court and received a suspended sentence. Four days after his plea, the defendant was charged by state authorities in Virginia with new drug offenses, unrelated to the federal prosecution. A probation violation was alleged by the federal authorities in response to the new state charges, and he was ultimately sentenced to 15 days in custody by the federal magistrate for the violation. By mistake, he was released from custody after having served only 4 days. The defendant's attorney notified the federal government, which filed a new petition with the court requesting that he be returned to custody for the remaining 11 days of his sentence on the probation violation. In response, the defendant requested credit for the time he spent erroneously released from custody, which would have resulted in a time-served sentence. The magistrate judge and district court denied credit. On appeal, the Fourth Circuit noted that existing circuit precedent held that there was no constitutional due process claim for crediting time spent at liberty due to a mistaken early release from prison. To the extent that the defendant could state a claim for relief, it would be founded in the common law and principles of equity. Reviewing different approaches from other circuits, the court found two fundamental rules guided the analysis of such claims. One, the inmate is not entitled to credit for time erroneously spent at liberty if the inmate "had a role in creating his premature release." Two, an inmate is entitled to credit where the government caused the early release "maliciously," such as when the release is designed to extend the sentence. The court recognized that the situation at hand did not fit neatly into either category and acknowledged that such situations are more difficult to resolve. The court assumed without deciding that a right to such credit existed at least in some circumstances. It went on to analyze the competing interests in awarding credit versus denying it. Here, the defendant's crime was nonviolent, he brought the error to the attention of the government promptly, and did not contribute to his premature release. On the other hand, he had only served a third of his active sentence for repeat drug violations, and the magistrate initially reviewing the matter had allowed him to serve the rest of his time on weekends or at other times. The sentence at issue is also not as disruptive to the defendant's life as a longer period of re-incarceration would be. Further, the government worked quickly to remedy the error once aware of it, and there was no proof of malice on the part of the government. Under these circumstances, it was not plain error or an abuse of discretion for the district court to deny credit.

North Carolina's robbery with a dangerous weapon offense qualifies as a violent felony for purposes of the Armed Career Criminal Act.

[*U.S. v. Burns-Johnson*](#), ___ F.3d ___ 2017 WL 3027872 (4th Cir. July 18th, 2017). In this challenge to an Armed Career Criminal Act (ACCA) enhancement, the defendant was charged with and convicted of possession of firearm by a felon in federal district court. Based on his prior convictions for armed robbery from North Carolina, the district court found him subject to the ACCA mandatory minimum of

180 months and sentenced him accordingly. On appeal, the defendant argued that North Carolina's armed robbery statute (G.S. 14-87) did not qualify as a violent felony under the ACCA because it was not an offense that "has as an element the use, attempted use, or threatened use of physical force against the person of another." 18 U.S.C. § 924(e)(1)(i). Specifically, he argued that the force required to sustain an armed robbery conviction under North Carolina law was insufficient to constitute the type of "violent force" required by the ACCA. The defendant pointed out that armed robbery under the state statute could be accomplished by means of indirect force, such as with poison. He argued that because North Carolina has defined "dangerous weapons" broadly in the robbery context, such that the armed robbery could be committed without the direct use of violent physical force, it therefore fails to meet the ACCA definition of force. The court rejected this contention, noting that whether the required force was direct or indirect (such as in the case of the use of poison) did not matter. North Carolina's armed robbery statute categorically requires the use, threatened use, or attempted use of violent physical force and thus meets the ACCA definition of force.

The defendant also argued that because North Carolina's armed robbery offense does not require the intentional use of force, it could not qualify as a violent felony. In other words, armed robbery under North Carolina law could be committed with the use of unintentional force and thus could not be categorically considered a violent felony. As to this second argument, the court noted that this issue was previously decided by the court in *U.S. v. Doctor*, 842 F.3d 306 (4th Cir. 2016). Citing that opinion, the court stated: "The intentional taking of property, by means of violence or intimidation sufficient to overcome a person's resistance, must entail more than accidental, negligent, or reckless conduct." The panel could imagine no situation where the use (or threatened or attempted use) of force during a robbery could occur due to mere negligence, accident, or recklessness, and the defendant produced no North Carolina cases showing such a result had occurred. Applying the categorical approach, the court concluded that North Carolina's armed robbery offense is a violent felony for purposes of the ACCA.