

APPEAL NO. 24-4211

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,**Plaintiff-Appellee,***versus***RICHARD ALEXANDER MURDAUGH,****Defendant-Appellant.**

APPELLEE'S MOTION TO DISMISS APPEAL

Appellant Richard Alexander Murdaugh's appeal must be dismissed.¹ Murdaugh entered into a knowing and voluntary appeal waiver, and his challenges to his sentence fall within the scope of that waiver.

I. BACKGROUND

Murdaugh was a personal injury attorney at a prominent law firm in Hampton, South Carolina. JA198, ¶3. For more than 15 years, he spun a complex web of exploitation, manipulation, and deceit, preying on highly vulnerable victims in pursuit of his own financial gain. *See* JA230, ¶107. He stole \$10,901,547.32 from

¹ Under Local Rule 27(a), the undersigned informed Murdaugh's counsel that the United States would move to dismiss. Counsel objects.

27 individuals and his law partners. JA149; JA207, ¶¶33; JA225-228, ¶¶104; JA229, ¶¶106. And he laundered over \$6 million of the stolen funds. JA230, ¶¶107.

A. Murdaugh's Crimes

As a personal injury attorney, Murdaugh represented individuals in civil claims following injury, death, and other loss. JA198, ¶3. Between at least September 2005 and September 2021, he devised and executed a scheme to defraud and to obtain money owed to both his clients and his law firm. The scheme evolved over the years to avoid detection and to capitalize on every opportunity to increase Murdaugh's ill-gotten gains. JA213-229, ¶¶71-106. He:

- Drafted, and directed law firm employees to draft, paperwork diverting settlements funds to his personal bank accounts;
- Claimed funds that were held in the law firm's trust account to satisfy liens on clients' settlement funds as attorney's fees and then directed the disbursement of those funds for his personal benefit;
- Claimed and collected attorney's fees on fake or nonexistent annuities;
- Created fraudulent "expenses" not incurred on client matters and directed the disbursement of settlement funds to pay the fake costs, including claimed medical expenses, construction expenses, and airline expenses;
- Directed other attorneys to disburse attorney's fees directly to him; and
- Intercepted insurance proceeds intended for beneficiaries and then deposited them directly into his personal account.

JA205-206, ¶¶27-29.

In another scheme, Murdaugh owned and controlled bank accounts disguised as accounts for Forge Consulting, LLC, a company that specializes in brokering structured insurance settlements. JA206-207, ¶¶31-36. He used those fake Forge accounts to hide the source and destination of his stolen funds and to funnel millions into his pockets. Then he laundered the money by making cash withdrawals, transferring funds to other personal bank accounts, making credit card payments, and issuing checks to other people. JA228, ¶105.

Murdaugh also exploited his position in the community, the power of his firm, and his personal relationships, using his influence to enlist others to facilitate and conceal his crimes. One scheme began in 2011, when Murdaugh started recruiting personal friend and banker Russell Laffitte to serve as a fiduciary for some of Murdaugh's most vulnerable clients: Hannah and Alania Plyler, Natasha Thomas, Hakeem Pinckney, and Arthur Badger. JA213-214, ¶¶71-73. The Plyler sisters had been injured in a car accident that killed their mother and brother. JA214, ¶72. Thomas was a young girl recovering from severe injuries sustained in a car accident. *See* JA214-215, ¶¶74-76. Pinckney had passed away after being rendered a quadriplegic in the same accident. JA214, ¶74; JA215, ¶76. And Badger was left to raise six young children after burying his wife. JA215, ¶77.

Laffitte extended Murdaugh nearly \$1 million in loans from the conservatorship Laffitte managed for Hannah Plyler. JA214, ¶73. And together,

Murdaugh and Laffitte stole over \$2 million in fees and settlement proceeds from Thomas, Pinckney, and Badger. JA214, ¶73. They used that money to pay back Hannah Plyler, pay Murdaugh's personal debts and expenses, and provide gifts to family.² JA214, ¶73.

In a separate scheme, Murdaugh and his close friend and fellow attorney Cory Fleming stole from Pamela Pinckney, Hakeem's mother. JA218, ¶¶82-83. She was badly injured in the car accident that rendered her son a quadriplegic. JA218 n.8. And from 2012 to 2017, Murdaugh and Fleming diverted her settlement funds to enrich themselves, including by chartering flights to the College Baseball World Series. JA218, ¶¶82-83.

In 2018, Murdaugh and Fleming conspired again to steal from other vulnerable victims: the children of Murdaugh's housekeeper, Gloria Satterfield. JA218-219, ¶84. Satterfield fell at Murdaugh's home and died shortly thereafter. JA218-219, ¶84. Murdaugh convinced Fleming to represent Satterfield's sons and sue Murdaugh to recover on his homeowner's insurance policy. JA218-219, ¶84.

² Laffitte was sentenced to 87 months in prison for his role in the scheme. Judgment, *United States v. Laffitte*, No. 9:22-cr-658-RMG, ECF No. 316 (D.S.C.). His appeal is set for oral argument on September 25, 2024. *United States v. Laffitte*, No. 23-4509, ECF No. 116 (4th Cir. docketed Aug. 10, 2023). He is still facing related state charges. *State Grand Jury indicts Russell Laffitte*, South Carolina Attorney General, <https://www.scag.gov/about-the-office/news/state-grand-jury-indicts-russell-laffitte-along-with-cory-fleming-and-alex-murdaugh-for-new-charges-in-superseding-indictments/> (last visited Aug. 7, 2024).

Together, they lied to Satterfield's sons, the court, opposing counsel, and the insurance companies, and they falsified settlement documents.³ JA218-221, ¶¶84-95. In the end, Murdaugh stole more than \$4.3 million from Satterfield's sons. JA221-222, ¶95. They did not get a penny. JA221, ¶95.

Murdaugh's schemes unraveled in 2021. On June 7, a law firm employee confronted him about funds missing in one of his cases. JA222, ¶¶96-97. That night, his wife and son were brutally murdered. JA222, ¶97. By September, the law firm realized Murdaugh had been stealing from client trust accounts. JA222, ¶98. And in October, the State charged him with 139 counts related to his thefts. JA233-237, ¶¶120-126; JA241-245, ¶¶132-137.

In July 2022, the State charged Murdaugh with the murder of his wife and son. JA237, ¶126. A jury found him guilty in March 2023, and he was sentenced to two consecutive life terms. JA237, ¶126.

B. Federal Indictment and Plea Agreement

In May 2023, Murdaugh was indicted on 22 federal counts: Conspiracy to Commit Wire and Bank Fraud (Count 1); Bank Fraud (Count 2); Wire Fraud

³ Fleming was sentenced to 46 months in federal prison for his role in the scheme. Judgment, *United States v. Fleming*, No. 9:23-cr-394-RMG, ECF No. 35 (D.S.C.). He was sentenced to a consecutive 10-year term in state prison. See State's Mot. to Dismiss, *State v. Fleming*, No. 2023-00193 (S.C. Ct. App. Feb. 9, 2024).

Affecting a Financial Institution and Wire Fraud (Counts 3-7); Conspiracy to Commit Wire Fraud (Count 8); and Money Laundering (Counts 9-22). JA9-33.

Murdaugh entered into a written plea agreement with the Government. JA37-46. Murdaugh, his counsel, and the prosecutor signed it. JA46. The Government agreed to recommend that Murdaugh's sentence be served concurrent to any state sentence imposed for the same conduct. JA42-43. In exchange, Murdaugh agreed to fully cooperate with the Government and to partially waive his appellate and post-conviction rights. JA41-43; JA45-46. The relevant portion of the waiver provision states:

The Defendant is aware that 18 U.S.C. § 3742 and 28 U.S.C. § 2255 afford every defendant certain rights to contest a conviction and/or sentence. Acknowledging those rights, the Defendant, in exchange for the concessions made by the Government in this Plea Agreement, waives the right to contest either the conviction or the sentence in any direct appeal or other post-conviction action, including any proceedings under 28 U.S.C. § 2255. This waiver does not apply to claims of ineffective assistance of counsel, prosecutorial misconduct, or future changes in the law that affect the Defendant's sentence.

JA45-46.

C. Federal and State Guilty Pleas

The district court accepted Murdaugh's guilty plea in September 2023. JA3, ECF No. 38, 40. During the change-of-plea hearing, the court questioned Murdaugh about his age, education, and history of mental health and/or substance abuse treatment. JA51-52. Murdaugh said that, although he had been treated for opiate

addiction, it did not affect his ability to understand the proceeding and he was not under the influence of any drugs, medications, or alcohol. JA51-52. His counsel and the Government told the court they had no doubts about his competency to plead guilty. JA52.

The court confirmed that Murdaugh was satisfied with his attorneys' representation, had enough time to discuss his case with his attorneys, and had no complaints regarding his counsel. JA52-53. It reviewed Murdaugh's constitutional rights and the rights he would be giving up by pleading guilty. JA53-55. It also reviewed each of the charges, their elements, and the possible penalties. JA56-60. Murdaugh said he understood them. JA60.

Murdaugh told the court that no one had threatened him to plead guilty and that no one had promised him a specific sentence. JA62-63. He affirmed that he was pleading guilty of his own free will because he is guilty. JA62.

The Government summarized the plea agreement. JA63-70. It explained that the agreement contained a partial appeal waiver:

Paragraph 10 is a limited waiver provision under which the defendant acknowledges the rights he has to contest his conviction and/or sentence, including rights under 28 U.S.C. 2255 and 18 U.S.C. 3742. He acknowledges those rights. And in exchange for the concessions made by the government, he waives the right to contest either his conviction or his sentence in any direct appeal or other post-conviction action. This waiver is limited, however, and does not apply to claims of ineffective assistance of counsel, prosecutorial misconduct, or future changes in the law that might affect his sentence.

JA68-69.

The court highlighted the waiver:

Every defendant, including one who pleads guilty, has a right to file an appeal or seek post-conviction relief regarding the conviction and/or sentence. You're partially waiving that right. You're retaining the right to file an appeal relating to prosecutorial misconduct, ineffective assistance of counsel or future changes in the law that affect the lawfulness of your sentence. Otherwise, you are waiving your appeal rights.

JA69. Murdaugh told the court he understood its impact. JA69.

The Government set forth the factual basis, JA70-79, and the court accepted Murdaugh's guilty plea, JA82. It found he was fully competent and capable of entering an informed plea, and that his plea was knowing, voluntary, and supported by the facts. JA82.

Two months after his federal guilty plea, Murdaugh pleaded guilty to 22 state charges related to his thefts. *See* JA233-236, ¶¶120-125. Most of those counts stemmed from the same conduct underlying the federal charges.⁴ But the state guilty pleas did not hold Murdaugh accountable for the full scope of his thefts because he was not convicted of or sentenced for thefts from 11 of his victims. JA132. He was sentenced to 27 years in prison. *See* JA233-236, ¶¶120-125.

⁴ Murdaugh pleaded to a state tax evasion charge that was not considered relevant conduct to the federal offenses. JA144; JA264.

D. Federal Sentencing

Murdaugh's presentence investigation report calculated an advisory guideline range of 210 to 262 months. JA116. Before sentencing, the district court issued a notice that it may consider an upward variance from the guideline range. JA5, ECF No. 64.

Murdaugh appeared for sentencing in April 2024. JA6, ECF No. 77. The court began the hearing by confirming Murdaugh had reviewed the PSR and discussed it with his attorneys. JA138-139. It overruled Murdaugh's lone objection and adopted the PSR's guidelines calculation. JA144; JA146.

Murdaugh's counsel argued that Murdaugh was being sentenced for "essentially the same conduct that he'd already pled guilty to in state court" and that the federal charges were "a result of a turf war between the attorney general of South Carolina and the U.S. attorney of South Carolina." JA147. The court disagreed, explaining that each sovereign had a right "to make a statement regarding the conduct of the defendant, which he has admitted to." JA147.

Counsel then argued that in other cases involving losses greater than \$10 million, the defendants—Sam Bankman-Fried, Jeffrey Skilling, and Elizabeth Holmes—received sentences between 11 and 25 years. JA148. The court noted that counsel had "left off a case": Bernie Madoff, who was sentenced to 150 years. JA148-149. Counsel argued that Murdaugh was 55 years old, had over 20 years left

to serve for his state financial crimes, and had accepted responsibility for the financial crimes since he was first confronted about them. JA149.

“But,” the court countered, “he committed 15 years of fraudulent conduct.” JA149. “He stole from 27 clients, some of the most needy, vulnerable human beings. One was a paraplegic [*sic*]. They were motherless children. They were widowers.” JA149. The court continued, “I’ve seen the disgrace that he’s brought, not just to himself, but to his law firm, to his county, to his state, the national -- the judicial system nationally. Those are all factors to be considered.” JA149. Defense counsel asked for a guidelines sentence, to run concurrently with Murdaugh’s state sentences for his financial crimes and the murders. JA151.

Murdaugh also addressed the court, expressing that he had used opiates “to hide from the things that [he] was doing to people that [he] care[d] about,” JA152, and that his addiction “contributed to [him] doing some of the things that [he] did,” JA153. He said he knew what he was doing was wrong and was committed to improving himself. JA154. And he told both the victims and the court that he was filled with remorse and guilt. JA154.

In response to Murdaugh’s comments about addiction, the court stated, “no truly impaired person could pull off these complex transactions. They are very complicated. . . . And using his undoubtable charm and charisma, he persuaded all kinds of people to do things they should not have done, and in furtherance of his

pursuit of countless amounts of cash.” JA156. The court again emphasized “that the victims were amongst some of the most vulnerable people we could imagine. . . . They were people whose lives had been turned upside down by collision or a wreck or some other tragic event, and they placed all their problems and all their hopes in Mr. Murdaugh. And it’s from those people he abused and stole.” JA156-157.

The Government argued that the nature and circumstances of Murdaugh’s offenses “really cannot be overstated when you look at the complexity of his scheme, the vulnerability of the victims, the abuse of the position of trust, the different ways that he was able to perpetuate and carry out his schemes by bringing in others to make sure that he was able to achieve his ultimate goal, all for his own enrichment.” JA158. And it explained that, under the Sentencing Guidelines, Murdaugh could be held accountable in federal court for 11 victims (totaling about \$1.3 million in loss) who were not the subject of state convictions. JA157.

The Government also addressed defense counsel’s comments about the federal interest in prosecuting Murdaugh. JA162. The prosecutor explained:

Of course, we defer[red] to our state partners in their prosecution of Mr. Murdaugh for the murders of his wife and son, as the most severe conduct. We always intended to charge him for the federal financial crimes and hold him fully accountable, but really with the goal of providing a backstop, that, should anything fall through with those murder convictions, we would have charged him and held him accountable within our statute of limitations, such that we wouldn’t be prohibited from doing so in the future.

JA162.

The Government argued that although Murdaugh had taken full responsibility for his conduct, he had not assisted the Government in identifying others involved in his schemes. JA164. And he had “never spent a penny of his own money to make these victims whole, or helped [the Government] find assets that can do that.” JA164-165. It therefore asked the court to take into consideration that Murdaugh had not fully cooperated. JA165.

The Government requested a 30-year sentence, the statutory maximum on Counts 1-4. JA165. The court responded that 30 years was “not actually the statutory max,” and the Government recognized that, although the court could stack sentences, 30 years was “sufficient but not greater than necessary” in part because, at 55 years old, “30 years is a death sentence, so to speak, and that’s, of course, taking into account that he’s already serving two consecutive life sentences for the murders of his wife and his son.” JA166.

The court sentenced Murdaugh to 40 years in prison. JA170. It imposed a 30-year sentence on four counts, a 20-year sentence on four counts, and a consecutive 10-year sentence on the 14 money laundering counts. JA170. It directed that the sentence run concurrently to Murdaugh’s state sentences. JA171. And it ordered Murdaugh to pay \$8,762,731.88 in restitution and \$10,034,377.95 in forfeiture. JA171; JA178.

The court then addressed what it considered to be the most relevant sentencing factors under 18 U.S.C. § 3553(a). JA174. As to the nature and circumstances of the offense, the court explained that Murdaugh's criminal conduct spanned 15 years and involved thefts of \$9.4 million from 27 clients and \$1.4 million from his law firm. JA174-175. It noted the "remarkable combination of extremely vulnerable victims" to whom Murdaugh had gained access "through a position of trust as an attorney." JA175. The court said Murdaugh's "reprehensible conduct" "deserves significant sanctions." JA175. It called his "systemic theft from clients" "very serious" offenses. JA175.

The court explained why the 40-year sentence promotes respect for the law and provides just punishment: "The defendant's conduct has brought disgrace and disrepute to himself, his law firm, the Hampton County Bar, the South Carolina Bar, and the South Carolina court system, if not the American court system," and a significant sentence "is necessary to uphold respect for the law and to make clear that the defendant is held accountable for his disregard for the rights of his clients in rampant uncontrolled dishonesty." JA175. The court explained that the sentence would also provide justice for Murdaugh's victims, "who suffer anguish on top of the tragedies that have brought them to his office." JA175.

Turning to deterrence, the court explained that it was "critical" to provide "general deterrence;" "that is, to deter others -- particularly, lawyers and other

fiduciaries.” JA176. The court intended Murdaugh’s sentence “to demonstrate the serious consequences to attorneys and other fiduciaries who engage in such conduct.” JA176.

The court then turned to the need to avoid unwarranted sentencing disparities. JA176. It referenced Murdaugh’s argument that 168 months was the average sentence and 210 months was the median for offenders with the same primary guideline, a total offense level of 34, and a criminal history category IV.⁵ JA176; *see* JA258, ¶ 209. “But,” the court said, “this is not a normal case.” JA176. In the judge’s 30 years of practicing law and 14 years on the bench, he said, “I’ve never seen this type of conduct: A massive fraud over many years, which took a human toll on its victims.” JA176.

The court analogized Murdaugh’s case to *United States v. Madoff*, No. 1:09-cr-213 (S.D.N.Y.), and quoted the district court from that sentencing: “Objectively speaking, the fraud was staggering. The breach of trust was massive. The crimes were extraordinarily evil. Not [merely] a bloodless crime that takes place on paper, but one that takes a staggering human toll. No other white-collar[] case is comparable in terms of scope, duration, and the enormity of the fraud and the degree

⁵ In FY2018-2022, there were only three defendants nationwide who fit these criteria. JA258, ¶209.

of [the betrayal].”⁶ JA176-177. The court noted that Murdaugh’s case, like Madoff’s, involved “a methodical financial crime, devastating his victims over a prolonged period of time.” JA177. It concluded, “this sentence must speak the truth. And the truth here is that this is a reprehensible crime that deserves the most serious sanction.” JA177; *see also* JA269.

Murdaugh did not object to the sentence on constitutional grounds or raise any Eighth Amendment concerns.

E. Appeal

Murdaugh timely filed a notice of appeal. JA190. His opening brief raises two claims, both grounded in the Eighth Amendment: that the district court erred by sentencing him to a de facto life sentence without conducting a proportionality review, and that his sentence is grossly disproportionate to his crimes. Both are barred by the appeal waiver.

II. THE APPEAL MUST BE DISMISSED BECAUSE MURDAUGH’S CLAIMS FALL WITHIN HIS VALID AND ENFORCEABLE WAIVER.

Murdaugh’s Eighth Amendment claims are barred by the appeal waiver in his plea agreement. When “the Government seeks enforcement of an appeal waiver,” the Court “will generally enforce the waiver to preclude a defendant from appealing

⁶ *See* Sent. Tr., *Madoff*, No. 1:09-cr-213 (S.D.N.Y.), *available at* <https://www.justice.gov/usao-sdny/file/762821/dl?inline> (last accessed Aug. 7, 2024).

a specific issue if the record establishes that the waiver is valid and the issue being appealed is within the scope of the waiver.” *United States v. Toebe*, 85 F.4th 190, 201 (4th Cir. 2023) (quotation marks omitted). Murdaugh’s waiver is valid and his Eighth Amendment claims are within its scope. His appeal must be dismissed.

A. Murdaugh knowingly and intelligently waived his appeal rights.

“[A]n appellate waiver is valid if the defendant’s agreement to the waiver was knowing and intelligent.” *Id.* (quotation marks and alteration omitted). To assess a waiver’s validity, the courts examine “the totality of the circumstances, including the experience and conduct of the accused, as well as the accused’s educational background and familiarity with the terms of the plea agreement.” *United States v. General*, 278 F.3d 389, 400 (4th Cir. 2002) (quotation marks omitted). “Generally, if the district court fully questions a defendant regarding the waiver provision during the Fed. R. Crim. P. 11 colloquy, the waiver is valid and enforceable.” *United States v. Jones*, 674 F. App’x 318, 320 (4th Cir. 2017) (unpublished) (citing *United States v. Johnson*, 410 F.3d 137, 151 (4th Cir. 2005)).

Murdaugh knowingly and intelligently waived his right to appeal his conviction and sentence. During his change-of-plea hearing, the district court conducted a comprehensive Rule 11 colloquy that complied with all elements of the Rule. The court questioned Murdaugh about his age, education, and history of mental health and substance abuse treatment. JA51-52. Murdaugh told the court

that no one had threatened him, intimidated him, or promised him anything in return for pleading guilty; that he had enough time to decide whether to plead guilty; and that he was pleading guilty of his own free will. JA62-63. Murdaugh also confirmed that he was not under the influence of medications, drugs, or alcohol, JA51, and that he was satisfied with his counsel's representation, JA52-53.

Murdaugh told the court that he had read the plea agreement, understood it, signed it, and discussed it with his attorneys, and that it set out his entire agreement with the Government. JA56; JA70. The court noted that Murdaugh had been a member of the bar, so he would have a superior understanding of the proceedings. JA53. Nonetheless, the court performed a thorough plea colloquy, confirming with Murdaugh his constitutional rights and the rights he was waiving. JA53-56; JA60-62.

The Government summarized the plea agreement, including the appeal waiver. JA63; JA68-69. The court reiterated the effect of the appeal waiver, confirming with Murdaugh that after entering a guilty plea, he retained the right to file an appeal only if it related to prosecutorial misconduct, ineffective assistance of counsel, or future changes in the law that affect the lawfulness of his sentence. JA69. Murdaugh confirmed his understanding of the waiver. JA69.

The court found that Murdaugh was fully competent and capable of entering an informed plea, and that his plea was knowing and voluntary. JA82. He knowingly and intelligently waived the right to challenge his sentence.

B. Murdaugh’s claims fall within the scope of the appeal waiver.

Murdaugh’s appeal waiver bars the Eighth Amendment claims raised in his opening brief. He “waive[d] the right to contest either the conviction or the sentence in any direct appeal.” JA45. There are only two classes of exceptions to that waiver: the claims enumerated in the plea agreement and the claims this Court has held cannot be waived. Murdaugh’s claims fall within neither.

First, Murdaugh’s claims do not fall within any of the plea agreement’s exceptions to the waiver. The waiver “does not apply to claims of ineffective assistance of counsel, prosecutorial misconduct, or future changes in the law that affect the Defendant’s sentence.” JA45. Murdaugh has not alleged ineffective assistance of counsel or prosecutorial misconduct. And he has not identified a change in the law that affects his sentence. His Eighth Amendment claims are not exempt from the waiver.

Second, Murdaugh’s claims do not fall within the narrow class of unwaivable claims. “[A] defendant who waives the right to appeal nevertheless retains the right to obtain appellate review of his sentence on certain limited grounds, even if those grounds are *not* specified in the plea agreement.” *Toebbe*, 85 F.4th at 202 (quotation

marks omitted). But “a defendant’s mere expectation of a lower sentence, even if reasonable, is not a ground for [the Court] to fail to enforce the defendant’s valid appeal waiver.” *Id.* at 203. Instead, the “only” circumstance in which the Court has “declined to enforce a valid appeal waiver is where the sentencing court violated a fundamental constitutional or statutory right that was firmly established at the time of sentencing.” *Id.* at 202 (quotation marks omitted); *see id.* (noting waiver cannot bar right to challenge sentence outside statutory maximum or based on constitutionally impermissible factor). Murdaugh’s case does not present such a circumstance.

Murdaugh’s unpreserved claims⁷—that the district court erred by imposing a de facto life sentence without conducting a proportionality review and by imposing a disproportionate sentence—do not establish that the district court violated a firmly established constitutional right. “The Eighth Amendment’s narrow proportionality principle does not require strict proportionality between crime and sentence, but forbids only extreme sentences that are grossly disproportionate to the crime.” *United States v. Ross*, 72 F.4th 40, 51 (4th Cir. 2023) (quotation marks omitted). Courts conducting a proportionality review conduct a “threshold comparison” of the

⁷ *See United States v. Young*, No. 22-4373, 2023 WL 4929303, at *1 (4th Cir. Aug. 2, 2023) (unpublished) (reviewing Eighth Amendment proportionality claim for plain error because defendant “did not raise a constitutional challenge to his sentence in the district court”); *United States v. Sumter*, 801 F. App’x 195, 195-96 (4th Cir. 2020) (unpublished) (same).

“gravity of the offense and the severity of the sentence,” asking whether it “leads to an inference of gross disproportionality.” *Id.* (quotation marks omitted). They do the comparison Murdaugh requests—to sentences for other offenses in the same jurisdiction and sentences for similar offenses in other jurisdictions—only if that threshold inference is drawn. *Id.*; *see* Br. at 12.

There can be no inference of gross disproportionality in this case. “The Supreme Court has identified a non-capital sentence as grossly disproportionate in just one case, where a repeat offender received a life sentence without parole for passing a bad check for \$100”—“one of the most passive felonies a person could commit.” *Id.* at 51 (quotation marks omitted). It has otherwise “consistently declin[ed] to draw the threshold inference of gross disproportionality.” *Id.* And this Court has never identified a grossly disproportionate life sentence or putative life sentence. *Id.* at 52.

Murdaugh’s case shouldn’t be the first. His offenses “are far from one of the most passive felonies a person could commit.” *See id.* Through a series of “complex transactions” spanning 15 years, he stole from a “remarkable combination of extremely vulnerable victims” “whose lives had been turned upside down” and who placed “all their hopes” in him. JA149; JA156-157; JA175. His “systemic theft from clients” and “rampant uncontrolled dishonesty” “brought disgrace and disrepute to himself, his law firm, the Hampton County Bar, the South Carolina Bar,

and the South Carolina court system, if not the American Court system.” JA175. His “methodical” and “reprehensible” crimes devastated his victims and “deserve[] the most serious sanction.” JA177. Murdaugh’s crimes and sentence fall nowhere close to the “rare cases” where the Court can draw an inference of gross disproportionality. *See Ross*, 72 F.4th at 52.

Even if the Court moves to the next step and compares his sentence to the sentences for other offenses in the same jurisdiction and to sentences for similar offenses in other jurisdictions, *see Ross*, 72 F.4th at 51, Murdaugh’s proportionality claims fail. The district court conducted the comparative analysis Murdaugh claims was lacking. It extensively discussed the gravity of the offense and the need for “the most serious sanction.” JA149; JA156-157; JA174-177. And it rejected Murdaugh’s analogy to other cases and reliance on average sentences, finding this was “not a normal case” and that *Madoff* was the most appropriate comparator. JA148-149; JA176-177. For the reasons the district court provided, Murdaugh’s sentence is not grossly disproportionate to his offenses. It is just and wholly deserved.

Murdaugh latches on to the Government’s comment at sentencing that the federal financial charges served as a “backstop,” JA162, suggesting that the 40-year sentence is too harsh because it was actually meant to punish him for the murders, Br. at 6, 14, 15. His claim is without merit.

In response to defense counsel's comments about the federal interest in Murdaugh's financial crimes, the Government explained why it charged Murdaugh even though he was already serving two consecutive life sentences. JA162. Murdaugh committed two sets of heinous crimes: he executed his wife and son, and he stole over \$10 million from people who trusted him. He should be punished for both.

The "backstop" was not to make sure Murdaugh would serve time in federal prison for the *murders* even if those convictions are vacated. It was to make sure that Murdaugh would be held accountable for his *15 years of fraudulent conduct* in the event his murder convictions are overturned.

The district court thoroughly explained why the § 3553(a) factors warranted a 40-year sentence. JA174-177. It did not mention the murders once. Murdaugh earned every day of the 40 years through the "massive fraud" he committed "over many years, which took a human toll on its victims." JA176. As in *Toebbe*, he has "failed to demonstrate an acceptable reason why [his] appeal waiver should not be enforced against [his] Eighth Amendment claim."⁸ 85 F.4th at 205.

⁸ See also *United States v. Vines*, No. 23-4277, 2024 WL 1044757, at *3 (4th Cir. Mar. 11, 2024) (unpublished); *United States v. Smiley*, 750 F. App'x 226, 227 (4th Cir. 2019) (unpublished); *United States v. Mason*, 495 F. App'x 373, 375 (4th Cir. 2012) (unpublished); *United States v. Putney*, 377 F. App'x 302, 303 (4th Cir. 2010) (unpublished); *United States v. Briscoe*, 307 F. App'x 748, 749-50 (4th Cir. 2009) (unpublished); but see *United States v. Calderon*, No. 19-4907, 2022 WL 898012, at *1 (4th Cir. Mar. 28, 2022) (unpublished).

Murdaugh's argument is, at bottom, that his sentence was too high. But his "mere expectation of a lower sentence" is not a basis for escaping his valid and enforceable appeal waiver. *Id.* at 203. If the Court holds that his claims can move forward simply because he couched them in Eighth Amendment terms, every defendant discontent with his sentence could evade his binding and valid appeal waiver just by calling the sentence "disproportional." The exception would swallow the rule, and appeal waivers would become meaningless. Murdaugh's appeal must be dismissed.

III. CONCLUSION

Murdaugh's appeal waiver is valid, and both of his claims fall within its scope. The United States respectfully requests this Court dismiss his appeal.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 24-4211Caption: United States of America v. Richard Alexander Murdaugh**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT**

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Type-Volume Limit for Briefs: Appellant's Opening Brief, Appellee's Response Brief, and Appellant's Response/Reply Brief may not exceed 13,000 words or 1,300 lines. Appellee's Opening/Response Brief may not exceed 15,300 words or 1,500 lines. A Reply or Amicus Brief may not exceed 6,500 words or 650 lines. Amicus Brief in support of an Opening/Response Brief may not exceed 7,650 words. Amicus Brief filed during consideration of petition for rehearing may not exceed 2,600 words. Counsel may rely on the word or line count of the word processing program used to prepare the document. The word-processing program must be set to include headings, footnotes, and quotes in the count. Line count is used only with monospaced type. See Fed. R. App. P. 28.1(e), 29(a)(5), 32(a)(7)(B) & 32(f).

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/s/Kathleen Michelle Stoughton, Assistant United States Attorney

Party Name: United States of America, Appellee

Dated: August 8, 2024

11/14/2016 SCC