877 F.3d 720
United States Court of Appeals, Seventh Circuit.

Michael SMITH, Petitioner-Appellant,
v.
UNITED STATES of America, Respondent-Appellee.
United States of America, Plaintiff-Appellee,
v.
Michael J. Khoury, Defendant-Appellant.

No. 17-1730, No. 17-2090
|
Argued November 14, 2017
|
Decided December 13, 2017

Synopsis

Background: Federal inmates filed motions to vacate, set aside, or correct sentence. The United States District Court for the Northern District of Illinois, No. 16 C 6606, Robert W. Gettleman, J., 2017 WL 1321110, and the United States District Court for the Southern District of Illinois, No. 3:15-CR-30013-DRH-1, David R. Herndon, J., 2017 WL 373295, denied motions, and inmates appealed. Appeals were consolidated.

[Holding:] The Court of Appeals, Easterbrook, Circuit Judge, held that defendants' prior Illinois convictions for residential burglary were predicate "violent felonies" under Armed Career Criminal Act (ACCA).

Affirmed.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 16 C 6606—**Robert W. Gettleman**, *Judge*.

Appeal from the United States District Court for the Southern District of Illinois. No. 3:15-CR-30013-DRH-1—**David R. Herndon**, *Judge*.

Attorneys and Law Firms

Carol A. Brook, Attorney, William H. Theis, Attorney, Office of the Federal Defender Program, Chicago, IL, for Petitioner-Appellant.

Andrianna D. Kastanek, Attorney, Office of the United States Attorney, Chicago, IL, for Respondent-Appellee.

Before Bauer, Easterbrook, and Sykes, Circuit Judges.

Opinion

Easterbrook, Circuit Judge.

These appeals, which we have consolidated for decision, present the question whether a conviction for residential burglary in Illinois under 720 ILCS 5/19-3 (1982) counts as "burglary" for the purpose of the Armed Career Criminal Act, 18 U.S.C. § 924(e). *Taylor v. United States*, 495 U.S. 575, 110 S.Ct. 2143, 109 L.Ed.2d 607 (1990), holds that a state's label is not dispositive and that a conviction counts only if the offense meets a federal definition of "generic burglary". We held in *United States v. Haney*, 840 F.3d 472 (7th Cir. 2016), that the pre-1982 version of Illinois law covering ordinary burglary did not satisfy the federal definition. Michael Smith and Michael Khoury (collectively "defendants") ask us to hold the same about the residential-burglary statute under which they were convicted.

The facts and procedural histories of these cases do not matter. It is enough to say that each defendant was convicted of possessing a firearm, see 18 U.S.C. § 922(g)(1), despite earlier convictions making that illegal. Each is serving 180 months' imprisonment, the statutory floor for someone convicted of this crime who has three or more earlier convictions for a violent felony or serious drug offense. Section 924(e)(2)(B)(ii) includes "burglary" in the list of violent felonies but does not define "burglary." For both defendants a 180-month sentence is proper only if a ***722** conviction for residential burglary in Illinois under the 1982 revision of 720 ILCS 5/19-3 is "generic burglary" under *Taylor*. The appeals in both defendants' cases arise from collateral attacks, but the United States waived all procedural defenses in order to facilitate appellate resolution of the question, which affects many other sentences. None of the procedural matters is jurisdictional, so the waivers are conclusive. See *Wood v. Milyard*, 566 U.S. 463, 132 S.Ct. 1826, 182 L.Ed.2d 733 (2012).

Both district judges relied on *Dawkins v. United States*, 809 F.3d 953 (7th Cir. 2016), which they read as conclusively establishing that residential burglary in Illinois satisfies *Taylor*. But the only question addressed in *Dawkins* was whether residential burglary in Illinois includes the element of breaking and entering; we answered yes. *Dawkins* did not consider whether the Illinois offense includes the element of entering a "building or other structure" (*Taylor*, 495 U.S. at 598, 110 S.Ct. 2143). That a given decision resolves one legal argument bearing on a subject does not mean that it has resolved all possible legal arguments bearing on that subject. See *Rodriguez-Contreras v. Sessions*, 873 F.3d 579, 580 (7th Cir. 2017). So defendants' argument about the building-or-structure element is open.

In Illinois, "[a] person commits residential burglary who knowingly and without authority enters the dwelling place of another with the intent to commit therein a felony or theft." 720 ILCS 5/19-3(a). (This is how that statute read between 1982 and 2001; changes since then are irrelevant for the purpose of § 924(e).) Another statute defines "dwelling":

> (a) Except as otherwise provided in subsection (b) of this Section, "dwelling" means a building or portion thereof, a tent, a vehicle, or other enclosed space which is used or intended for use as a human habitation, home or residence.
>
> (b) For the purposes of Section 19-3 of this Code, "dwelling" means a house, apartment, mobile home, trailer, or other living quarters in which at the time of the alleged offense the owners or occupants actually reside or in their absence intend within a reasonable period of time to reside.

720 ILCS 5/2-6. (This definition has been in force since 1987, before defendants' predicate crimes occurred.) Defendants maintain that "a tent, a vehicle, or other enclosed space" is not a "structure" as the Supreme Court required in *Taylor*—which adopted as the common-law definition of burglary

> any crime, regardless of its exact definition or label, having the basic elements of unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime.

495 U.S. at 599, 110 S.Ct. 2143. Subsection (a), in which the phrase "a tent, a vehicle, or other enclosed space" appears, does not apply to the crime of residential burglary. To be convicted of that offense, a person must enter "a house,

apartment, mobile home, trailer, or other living quarters". And that phrase seems to come within *Taylor*'s reference to "a building or structure".

Not so, defendants insist. They contend that a "mobile home" and a "trailer" are not structures. That contention is a flop for a mobile home, which in Illinois is "a manufactured home as defined in subdivision (53) of Section 9-102 of the Uniform Commercial Code." 625 ILCS 5/1-144.03. The UCC, in turn, defines a manufactured home as a "structure, transportable in one or more sections, ... which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required ***723** utilities". A "mobile home," so defined, is a "building or structure" by anyone's understanding. It is just a prefabricated house. (There is some question whether 625 ILCS 5/1-144.03 applies to all uses of "mobile home" throughout Illinois law, but even if it does not a mobile home in common understanding remains a prefabricated house.)

Defendants are on firmer ground with "trailer," which the Illinois Vehicle Code defines as "[e]very vehicle without motive power in operation, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle." 625 ILCS 5/1-209. Although only those trailers in which "the owners or occupants actually reside" (720 ILCS 5/2-6(b)) count as dwellings, trailers are still movable. Defendants insist that the possibility of hitching a trailer to a vehicle and taking it on the highway during a vacation means that it cannot be a "building or structure" as the Justices used that phrase.

Worse, defendants insist, the open-ended statutory reference to "other living quarters" might include houseboats or tents or even cars. The state judiciary has never held that it *does* include those items, but the bare possibility that it might, defendants insist, means that Illinois law does not come within *Taylor*'s definition—for *Taylor* asks what the elements of the state law include, not what a given defendant did in fact. 495 U.S. at 600–02, 110 S.Ct. 2143. (The parties agree that § 5/19-3 is indivisible for the purpose of *Mathis v. United States*, —— U.S. ——, 136 S.Ct. 2243, 195 L.Ed.2d 604 (2016), so that if any of the defined ways to commit "residential burglary" in Illinois falls outside the federal definition of "burglary," the state-law convictions do not count under the Armed Career Criminal Act. See also *Descamps v. United States*, 570 U.S. 254, 133 S.Ct. 2276, 2283, 186 L.Ed.2d 438 (2013).)

We conclude that the crime of residential burglary in Illinois does not cover the entry of vehicles (including boats) and tents. These places are listed in subsection (a) of the definition but not in subsection (b), and the Appellate Court of Illinois has held that subsection (b) excludes all vehicles other than occupied trailers. *People v. Taylor*, 345 Ill. App. 3d 286, 280 Ill.Dec. 477, 802 N.E.2d 402 (2003). That decision logically covers boats and tents as well. Entering those places with intent to steal is ordinary burglary in Illinois but not residential burglary, and both defendants were convicted of residential burglary. The proper treatment of trailers as a matter of federal law remains to be determined, however.

[1] *Taylor v. United States* set out to create a federal common-law definition of "burglary." This counsels against reading its definition as if it were a statute. All common law is provisional. The Justices did not consider in *Taylor* or any later decision whether an occupied trailer counts as a "structure"—or, if it does not, whether the definition should be modified in common-law fashion to include all of those enclosed places in which people live. The Court began the substantive discussion in *Taylor* by noting an older common-law definition of burglary: "a breaking and entering of a dwelling at night, with intent to commit a felony" (495 U.S. at 592, 110 S.Ct. 2143). They added: "Whatever else the Members of Congress might have been thinking of, they presumably had in mind at least the 'classic' common-law definition when they considered the inclusion of burglary as a predicate offense." *Id.* at 593, 110 S.Ct. 2143. The Justices adopted a broader definition—omitting mention of the time of day, the nature of the entered place as a dwelling, and the requirement ***724** that the crime to be committed be a "felony"—because by 1984 almost all states had expanded their definitions of burglary, and the Justices concluded that a statutory word enacted in 1984 should mean what most states called burglary in 1984. Yet by defendants' lights that traditional definition, if enacted by any state, would not qualify as "burglary" because it uses the word "dwelling" (which can include a tent) rather than "building or structure." Likewise, by defendants' lights, the statutes that states do have on the books are not generic burglary because they contain words

such as "trailer" that exceed the scope of buildings and structures. Indeed, on defendants' view almost all states' existing burglary statutes are outside the scope of federal generic burglary.

Treating *Taylor* as if it were a statute, that is what four courts of appeals have held. *United States v. Stitt*, 860 F.3d 854 (6th Cir. 2017) (en banc) (Tennessee aggravated burglary is broader than generic burglary because it covers "mobile homes, trailers, and tents" used as dwellings); *United States v. Sims*, 854 F.3d 1037, 1039–40 (8th Cir. 2017) (Arkansas residential burglary is broader than generic burglary because it "criminalizes the burglary of vehicles where people live or that are customarily used for overnight accommodations"); *United States v. White*, 836 F.3d 437 (4th Cir. 2016) (West Virginia burglary is broader than generic burglary because it protects "dwelling house[s]," defined to include "mobile home[s]" and "house trailer[s]"); *United States v. Grisel*, 488 F.3d 844 (9th Cir. 2007) (en banc) (any state law that covers non-buildings is not generic burglary). At least one court of appeals has held the opposite. *United States v. Patterson*, 561 F.3d 1170 (10th Cir. 2009), reaffirming *United States v. Spring*, 80 F.3d 1450 (10th Cir. 1996). A panel of the Fifth Circuit agreed with the Tenth, but as it has granted rehearing en banc the rule in that circuit remains to be settled. See *United States v. Herrold*, 685 Fed.Appx. 302, rehearing en banc granted, 693 Fed.Appx. 272 (5th Cir. 2017).

[2] We think it unlikely that the Justices set out in *Taylor* to adopt a definition of generic burglary that is satisfied by no more than a handful of states—if by any. Statutes should be read to have consequences rather than to set the stage for semantic exercises. We therefore agree with the Tenth Circuit in *Patterson* and *Spring* and with Judge Sutton's dissenting opinion (joined by Judges Clay, Gibbons, Rodgers, McKeague, and Kethledge) in *Stitt*. See 860 F.3d at 876–81. A violation of 720 ILCS 5/19-3 is generic burglary for the purpose of § 924(e) and similar federal recidivist statutes.

In reaching this conclusion we have considered not only that common-law understandings are open to modification as circumstances reveal potential weaknesses but also the Supreme Court's own explanation for its definition. The Justices told us that "Congress meant by 'burglary' the generic sense in which the term is now used in the criminal codes of most States" (*Taylor*, 495 U.S. at 598, 110 S.Ct. 2143) and set out to produce a definition capturing that sense. Recognizing 720 ILCS 5/19-3 and similar statutes as generic burglary treats the Justices as having succeeded at that task; *Stitt* and similar decisions treat the Justices as having failed and having nullified part of a federal statute as a result.

After saying that their goal was to capture "the generic sense in which the term is now used in the criminal codes of most States," the Justices added that their "usage approximates that adopted by the drafters of the Model Penal Code" (*Taylor*, 495 U.S. at 598 n.8, 110 S.Ct. 2143), under which "[a] person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied portion thereof, with purpose to commit a crime ***725** therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter." ALI, *Model Penal Code* § 221.1 (1980). In the Model Penal Code the phrase "occupied structure" includes "any structure, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present." *Id.* at § 221.0(1). The Model Penal Code adds that, although someone cannot be convicted of burglary for entering an ordinary motor vehicle or freight car, a person may be convicted for entering a trailer home with intent to steal. *Id.* at § 221.1 Comment 3(b).

If defendants in these cases are right, then the Justices *said* that they were following the Model Penal Code's approach but *did* the opposite. We think it better to conclude that *Taylor*'s definition of generic burglary is a compact version of standards found in many states' criminal codes, including that of Illinois. We grant that, per *Shepard v. United States*, 544 U.S. 13, 15–16, 125 S.Ct. 1254, 161 L.Ed.2d 205 (2005), an unoccupied boat or motor vehicle is not a "structure." But just as *Taylor* did not grapple with all enclosed spaces that people may call home, neither did *Shepard*. Certainly the Justices did not say in *Shepard* that they were restricting the coverage of the generic definition adopted in *Taylor*.

People live in trailers, which are "structures" as a matter of ordinary usage. Trailers used as dwellings are covered by the Illinois residential-burglary statute. The crime in 720 ILCS 5/19-3 therefore is "burglary" under § 924(e)(2)(B)(ii). Defendants were properly sentenced as armed career criminals.

AFFIRMED

All Citations

877 F.3d 720

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MICHAEL J. KHOURY,

Petitioner,

v.

Civil Case No. 16-cv-1085-DRH
Criminal Case No. 15-cr-30013-DRH

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM & ORDER

HERNDON, District Judge:

I. Introduction

This matter is before the Court on petitioner Michael J. Khoury's motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255 (Doc. 1). Specifically, Khoury argues that in light of recent case law (a) he no longer has the requisite predicate offenses to make him an armed career criminal pursuant to 18 U.S.C. § 924(e) and (b) his base offense level under §2K2.1 was improperly calculated.

On January 11, 2017, the United States filed a response to Khoury's § 2255 petition (Doc. 15) in which they concede that his motion should be granted in part following the U*nited States v. Edwards*, 836 F.3d 831 (7th Cir. 2016) decision. The government indicates that in light of the *Edwards* decision, Khoury's guideline range is impacted. However, the government argues that Khoury remains an armed career criminal based upon his numerous convictions

for residential burglary. The government requests that this Court set aside Khoury's sentence and allow for resentencing pursuant to 28 U.S.C. § 2255(b) based upon the *Edwards* issue, but find that Petitioner is still an armed career criminal post-*Mathis*. For the reasons discussed herein, Khoury's to motion to vacate, set aside, or correct sentence (Doc. 1) is **GRANTED in part and DENIED in part**.

II. Background

On January 22, 2015, Khoury was charged with the unlawful possession of a firearm by a felon, 18 U.S.C. §§ 922(g)(1) and 924(a)(2), stemming from a burglary that occurred in St. Clair County, Illinois on January 20, 2015. *United States v. Khoury*, 15-cr-30013-DRH, (Doc. 1).[1] On May 12, 2015, Khoury pled guilty to the indictment pursuant to a written plea agreement (Cr. Doc. 19). In the plea agreement, the United States agreed to recommend a sentence at the low end of the guidelines range, which the parties had calculated as being 188–235 months' imprisonment (Cr. Doc. 20).

Ultimately, in light of previous burglary convictions, the Court concluded that Khoury was an armed career criminal pursuant to 18 U.S.C. §924(e). His guideline range was calculated as being 188–235 months, consistent with the plea agreement. Neither party objected to the guideline calculation. On December 18, 2015, the Court found that the PSR properly calculated the guidelines range, and Khoury was sentenced to 188 months' imprisonment, 5 years of supervised

[1] Further reference to Khoury's criminal docket in this order will include "Cr. Doc." prior to the document number to differentiate from his civil habeas case filings.

release, a $300 fine, and a $100 special assessment (Cr. Doc. 34). He did not file a direct appeal.

On September 26, 2016, Khoury filed the pending motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255 (Doc. 1). In his § 2255, Khoury argues that (1) in light of *Mathis v. United States*, 136 S.Ct. 2243, 2253 (2016), he no longer has the requisite predicate offenses to qualify as an armed career criminal and (2) in light of U*nited States v. Edwards*, 836 F.3d 831 (7th Cir. 2016), his base level offense was miscalculated.

III. Analysis

a. Armed Career Criminal

The Armed Career Criminal Act applies when a defendant has three convictions that constitute a "violent felony" or a "serious drug offense." 18 U.S.C. § 924(e)(1). In this case, Khoury argues that in light of the *Mathis* case, he no longer qualifies as an armed career criminal.

Mathis addressed the enumerated offenses clause of the ACCA. The Supreme Court held that the Iowa burglary statute is not divisible, because it creates alternative means and not alternative elements; thus, the district court erred in using the modified categorical approach to determine whether Mathis' burglary convictions were convictions for generic burglary. *Mathis v. United States*, 136 S.Ct. 2243, 2253 (2016). The Court noted that "the modified approach serves – and serves solely – as a tool to identify the elements of the crime of conviction when a statute's disjunctive phrasing renders one (or more) of

them opaque," and it "is not to be repurposed as a technique for discovering whether a defendant's prior conviction, even though for a too-broad crime, rested on facts (or otherwise said, involved means) that also could have satisfied the elements of a generic offense." *Mathis*, 136 S.Ct. at 2253–54.

In this case, Khoury's status as an armed career criminal was based on multiple convictions for residential burglary, burglary, and 2nd degree burglary spanning from 1993 until 2003 (Cr. Doc 29). The government concedes that Khoury's convictions under Missouri law for Burglary – 2nd Degree[2] no longer qualify as "violent felonies" for purposes of the ACCA. See *United States v. Smith*, No. 15-3033, 2016 WL 4626561 (7th Cir. Sept. 6, 2016). Moreover, the government also concedes that Khoury's convictions for Burglary[3] under Illinois law no longer qualify as "violent felonies" for purposes of the ACCA. *See United States v. Haney*, 840 F.3d 472, 475 (7th Cir. 2016).

That being said, Khoury's numerous convictions for residential burglary under Illinois law undoubtedly qualify as "violent felonies" for purposes of the ACCA, even post-*Mathis*.[4] Khoury still has at least three residential burglary

[2] Jefferson County, Missouri Case # 23CR197-1056 and St. Louis County Case # 03-CR-00014B
[3] Monroe County Case # 94-CF-23 and St. Clair County Case # 98-CF-93
[4] Both versions of the residential burglary statute – the current version and the version that was in effect at the time of Khoury's convictions – have "dwelling place of another" as the locational element. As the locational element is the same in both, the version in effect at the time of Khoury's convictions did not have locations that fell outside the scope of generic burglary as defined in *Taylor*. Thus, where *Dawkins v. United States,* 809 F.3d 953 (7th Cir. 2016) held that entering "without authority" was the same as entering "unlawfully," and *United States v. Haney,* 840 F.3d 472, 475 (7th Cir. 2016) held that the Illinois residential burglary statute does not include locations that fall outside *Taylor*'s scope, it is clear that a conviction for residential burglary under Illinois law still qualifies as a "violent felony" under the enumerated offenses clause contained in 18 U.S.C. 924(e)(2)(B)(ii).

convictions under Illinois law[5]; thus, he remains an armed career criminal. Accordingly, Khoury's first ground for relief is denied.

b. Base Offense Level in light of *Edwards*

In September 2016, the Seventh Circuit applied *Mathis* in the context of sentence enhancements under the sentencing guidelines. In *United States v. Edwards*, 836 F.3d 831 (7th Cir. 2016), the Seventh Circuit scrutinized whether a Wisconsin burglary statute was divisible, such that the sentencing judge could consult the state court charging documents to help decide whether a prior conviction was a crime of violence under the sentencing guidelines. The Court ultimately found that the Wisconsin law was not divisible. It identified two different means of committing a single crime (burglary) as opposed to listing alternative elements that create multiple, distinct offenses.

The Seventh Circuit highlighted that "after *Mathis*... it's clear that this recourse to state-court charging documents was improper. The relevant subsection of Wisconsin's burglary statute sets forth alternative means of satisfying the location element of the state's burglary offense." *Edwards*, 836 F.3d at 833. The Seventh Circuit held that the elements of the crime were broader than "the elements of the Guidelines offense so the defendants' burglary convictions cannot serve as predicate offenses under § 2K2.1(a)." *Id.* at 6.

In light of the *Edwards* decision, it appears that Khoury's base offense level is impacted and would have been lower than that imposed at the time of

[5] St. Clair County Case # 93-CF-71, Madison County Case # 94-CF-283, Madison County Case # 94-CF-286, and Madison County Case # 94-CF-308 (two counts)

sentencing. Accordingly, the Court grants Khoury's motion as to his second ground for relief and the matter shall set for resentencing

IV. Certificate of Appealability

Under Rule 11(a) of the RULES GOVERNING SECTION 2255 PROCEEDINGS, the "district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." A habeas petitioner does not have an absolute right to appeal a district court's denial of his habeas petition; he may appeal only those issues for which a certificate of appealability have been granted. *See Sandoval v. United States,* 574 F.3d 847, 852 (7th Cir. 2009). A habeas petitioner is entitled to a certificate of appealability only if he can make a substantial showing of the denial of a constitutional right. *Miller-El v. Cockrell,* 537 U.S. 322, 336 (2003); 28 U.S.C. § 2253(c)(2). Under this standard, a petitioner must demonstrate that, "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Id.* (quoting *Slack v. McDaniel,* 529 U.S. 473, 484 (2000)).

Where a district court denies a habeas petition on procedural grounds, the court should issue a certificate of appealability only if (1) jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and (2) jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *See Slack,* 529 U.S. at 485.

In this case, the Court shall issue a final order adverse to Khoury regarding his armed career criminal status. Thus the Court must decide whether to issue a certificate of appealability. In this case, it is clear that reasonable jurists could not debate that Khoury's claims surrounding his status as an armed career criminal should have been resolved in a different manner. Therefore, the Court declines to certify the issue for review pursuant to 28 U.S.C. § 2253(c).

V. Conclusion

For the reasons set forth above, Khoury's motion pursuant to 28 U.S.C. § 2255 to vacate, set aside or correct sentence, is **GRANTED in part and DENIED in part** (Doc. 1). The Court **GRANTS** Khoury's motion based upon the *Edwards* issue. However, Khoury's claims addressing his status as an armed career criminal are **DISMISSED with prejudice**. The Clerk is instructed to close the file and enter judgment accordingly. The Court shall not issue a certificate of appealability.

FURTHER, the Court finds it is appropriate to resentence Mr. Khoury and **DIRECTS** the Clerk of the Court to set the matter for resentencing in case number 15-cr-30013 *United States v. Khoury*. The resentencing shall be set for May 11, 2017, at 1:30pm before the undersigned.

FURTHER, the Court **DIRECTS** the United States Marshals Service ("USMS") to transport Michael J. Khoury to the resentencing of this matter to be held on May 11, 2017.

FURTHER, in light of the resentencing hearing to be set in case number 15-cr-30013, the Court **DIRECTS** the Probation office to update Mr. Khoury's PSR utilizing the current Guideline Manual and to provide the Court with information regarding the Khoury's conduct while incarcerated.

IT IS SO ORDERED.

Signed this 26th day of January, 2017.

David R. Herndon

Digitally signed by Judge David R. Herndon
Date: 2017.01.26 09:24:38 -06'00'

United States District Judge

AO 245C (SDIL Rev. 04/16) Amended Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
Southern District of Illinois

UNITED STATES OF AMERICA

V.

MICHAEL J. KHOURY

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: **3:15-CR-30013-DRH-1**
USM Number: **11454-025**

TODD SCHULTZ
Defendant's Attorney

Date of Original Judgment: December 18, 2015
(Or Date of Last Amended Judgment)
Reason for Amendment:

- ☒ **Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))**
- ☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P.35(b))
- ☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P.35(a))
- ☐ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P.36)
- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583))
- ☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- ☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- ☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
- ☐ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:
☒ pleaded guilty to count(s) 1 of the Indictment

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(1), 18 U.S.C. § 924(e)(1)	Unlawful Possession of a Firearm by a Felon	1/20/15	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ No fine

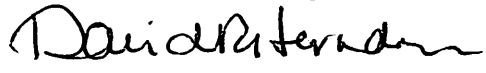
☒ Forfeiture pursuant to Order of the Court. See page 7 for specific property details.

It is ordered that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Restitution and/or fees may be paid to:
Clerk, U.S. District Court*
750 Missouri Ave.
East St. Louis, IL 62201

*Checks payable to: Clerk, U.S. District Court

May 11, 2017
Date of Imposition of Judgment



Signature of Judge
David R. Herndon, U. S. District Judge
Name and Title of Judge

Date Signed: May 11, 2017

DEFENDANT: Michael J. Khoury
CASE NUMBER: 3:15-CR-30013-DRH-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of 180 months.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:
☐ at _____ ☐ a.m. ☐ p.m. on
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
☐ before 2 p.m. on
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Michael J. Khoury
CASE NUMBER: 3:15-CR-30013-DRH-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years.

Other than exceptions noted on the record at sentencing, the Court adopts the presentence report in its current form, including the suggested terms and conditions of supervised release and the explanations and justifications therefor.

MANDATORY CONDITIONS

The following conditions are authorized pursuant to 18 U.S.C. § 3583(d).

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court, not to exceed 52 tests in one year.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

ADMINISTRATIVE CONDITIONS

The following 9 administrative conditions are imposed, consistent with 18 USC § 3583(d) and § 3553(a), as necessary for the defendant while on supervision as essential for the probation officer to successfully supervise the defendant and to provide defendant with the structure and monitoring needed to meet the objectives of supervision. As the 7th Circuit has observed, the defendant is to be placed on supervised release not complete release. Further, the Supreme Court has noted that persons on supervised release are not entitled to the full range of constitutional liberties those not otherwise encumbered are. Therefore, the Court has attempted to fashion common sense conditions which give the probation officer supervising the defendant the proper authority to adequately observe and monitor the defendant for the protection of the public. The Court notes that the probation officer's explanations for the conditions will help provide the defendant with an understanding of each of the conditions, the defendant has acknowledged an understanding of the conditions and defendant and counsel have stated they do not object to any of these conditions. The conditions are imposed in an effort to deter future crimes and protect the public.

The defendant must report to the probation office in the district to which the defendant is released within seventy-two hours of release from the custody of the Bureau of Prisons.

The defendant shall not knowingly possess a firearm, ammunition, or destructive device. The defendant shall not knowingly possess a dangerous weapon unless approved by the Court.

The defendant shall not knowingly leave the judicial district without the permission of the Court or the probation officer.

The defendant shall report to the probation officer in a reasonable manner and frequency directed by the Court or probation officer.

The defendant shall respond to all inquiries of the probation officer and follow all reasonable instructions of the probation officer.

The defendant shall notify the probation officer prior to an expected change, or within seventy-two hours after an unexpected change, in residence or employment.

The defendant shall not knowingly meet, communicate, or otherwise interact with a person whom the defendant knows to be engaged, or planning to be engaged, in criminal activity.

The defendant shall permit a probation officer to visit the defendant at a reasonable time at home or at any other reasonable location and shall permit confiscation of any contraband observed in plain view of the probation officer.

The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

SPECIAL CONDITIONS

Imposed pursuant to 18 U.S.C. § 3553(a) and 18 U.S.C. § 3583(d), and are imposed in order to protect the public from further crimes, and address the issue of recidivism, and for the reasons that are stated for each individual condition.

The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, unless prescribed by a physician.

The defendant shall participate in treatment for narcotic addiction, drug dependence, or alcohol dependence, which includes urinalysis and/or other drug detection measures and which may require residence and/or participation in a residential treatment facility, or residential reentry center (halfway house). The number of drug tests shall not exceed 52 tests in a one-year period. Any participation will require complete abstinence from all alcoholic beverages and any other substances for the purpose of intoxication. The defendant shall pay for the costs associated with services rendered, based on a Court approved sliding fee scale and the defendant's ability to pay. The defendant's financial obligation shall never exceed the total cost of services rendered. The Court directs the probation officer to approve the treatment provider and, in consultation with a licensed practitioner, the frequency and duration of counseling sessions, and the duration of treatment, as well as monitor the defendant's participation, and assist in the collection of the defendant's copayment.

While any financial penalties are outstanding, the defendant shall provide the probation officer and the Financial Litigation Unit of the United States Attorney's Office any requested financial information. The defendant is advised that the probation office may share financial information with the Financial Litigation Unit.

While any financial penalties are outstanding, the defendant shall apply some or all monies received, to

be determined by the Court, from income tax refunds, lottery winnings, judgments, and/or any other anticipated or unexpected financial gains to any outstanding court-ordered financial obligation. The defendant shall notify the probation officer within 72 hours of the receipt of any indicated monies.

The defendant shall pay any financial penalties imposed which are due and payable immediately. If the defendant is unable to pay them immediately, any amount remaining unpaid when supervised release commences will become a condition of supervised release and be paid in accordance with the Schedule of Payments sheet of the judgment based on the defendant's ability to pay.

The defendant's person, residence, real property, place of business, vehicle, and any other property under the defendant's control is subject to a search, conducted by any United States Probation Officer and other such law enforcement personnel as the probation officer may deem advisable and at the direction of the United States Probation Officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release, without a warrant. Failure to submit to such a search may be grounds for revocation. The defendant shall inform any other residents that the premises and other property under the defendant's control may be subject to a search pursuant to this condition.

U.S. Probation Office Use Only

A U.S. Probation Officer has read and explained the conditions ordered by the Court and has provided me with a complete copy of this Judgment. Further information regarding the conditions imposed by the Court can be obtained from the probation officer upon request.

Upon a finding of a violation of a condition(s) of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

Defendant's Signature _____ Date _____

U.S. Probation Officer _____ Date _____

DEFENDANT: Michael J. Khoury
CASE NUMBER: 3:15-CR-30013-DRH-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$100.00	N/A	$750.00	N/A

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

☐ Restitution amount ordered pursuant to plea agreement $_____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for ☐ fine ☐ restitution.

☐ the interest requirement for ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Michael J. Khoury
CASE NUMBER: 3:15-CR-30013-DRH-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A. ☐ Lump sum payment of $_____ due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B. ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☒ F below; or

C. ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $_____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D. ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $_____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E. ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F. ☒ Special instructions regarding the payment of criminal monetary penalties:
All criminal monetary penalties are due immediately and payable through the Clerk, U.S. District Court. Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be paid in equal monthly installments of $50 or ten percent of his net monthly income, whichever is greater. The defendant shall pay any financial penalty that is imposed by this judgment and that remains unpaid at the commencement of the term of supervised release.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several
Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States: a Smith & Wesson, Model M&P22, .22 caliber semiautomatic handgun, Serial Number MP090563; and any and all ammunition.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.