

A P P E N D I X

APPENDIX

Decision of the United States Court of Appeals for the Eleventh Circuit,

United States v. Walker, No. 17-13448 (11th Cir. Mar. 19, 2018) A-1

Order Granting Motion for Certificate of Appealability A-2

Judgment imposing sentence A-3

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13448
Non-Argument Calendar

D.C. Docket Nos. 1:16-cv-22372-JLK,
1:09-cr-20602-JLK-1

WILLIE WALKER,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(March 19, 2018)

Before WILLIAM PRYOR, MARTIN and JILL PRYOR, Circuit Judges.

PER CURIAM:

Willie Walker appeals the denial of his second motion to vacate his sentence. 28 U.S.C. § 2255. Walker argued that he lacked sufficient predicate offenses to be sentenced as an armed career criminal because, in the wake of *Johnson v. United States*, 135 S. Ct. 2551 (2015), his convictions in 1982, 1985, and 1986 for robbery did not qualify as “violent felon[ies],” 18 U.S.C. § 924(e)(2)(B). The district court ruled that Walker’s argument was foreclosed by *United States v. Fritts*, 841 F.3d 937 (11th Cir. 2016). We affirm.

The district court correctly denied Walker’s motion to vacate. *Fritts* controls this appeal. Walker’s prior convictions in Florida for robbery, Fla. Stat. § 812.13, qualify categorically as violent felonies under the elements clause of the Armed Career Criminal Act. *See Fritts*, 841 F.3d at 939–42 (discussing *United States v. Dowd*, 451 F.3d 1244 (11th Cir. 2006), and *United States v. Lockley*, 632 F.3d 1238 (11th Cir. 2011)); *United States v. Seabrooks*, 839 F.3d 1326, 1338–45 (11th Cir. 2016). *Fritts* “is the law of this Circuit[and] . . . bind[s] all subsequent panels unless and until the . . . holding is overruled by the Court sitting en banc or by the Supreme Court.” *Seabrooks*, 839 F.3d at 1341 (quoting *Smith v. GTE Corp.*, 236 F.3d 1292, 1300 n.8 (11th Cir. 2001)).

We **AFFIRM** the denial of Walker’s second motion to vacate.

MARTIN, Circuit Judge, joined by JILL PRYOR, Circuit Judge, concurring in judgment:

The majority is quite right that our circuit precedent dictates that Mr. Walker’s previous robbery convictions under Florida Statute § 812.13 qualify as violent felonies as that term is defined by the elements clause of the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e). See United States v. Fritts, 841 F.3d 937, 943–44 (11th Cir. 2016). However, I continue to believe that Fritts was wrongly decided. In particular, the Fritts panel failed to give proper deference to McCloud v. State, 335 So. 2d 257 (Fla. 1976), the controlling Florida Supreme Court case interpreting § 812.13 at the time Mr. Walker was convicted under that statute. In McCloud, Florida’s highest court held that taking by “[a]ny degree of force” was sufficient to justify a robbery conviction. Id. at 258–59 (emphasis added). Under McCloud, a defendant could therefore be convicted of Florida robbery without using, attempting to use, or threatening to use “violent force,” Curtis Johnson v. United States, 559 U.S. 133, 140, 130 S. Ct. 1265, 1271 (2010), or a “substantial degree of force,” United States v. Owens, 672 F.3d 966, 971 (11th Cir. 2012), as necessary to qualify as a violent felony under ACCA.

To support Mr. Walker’s ACCA sentence, the government relies in part on three robberies Mr. Walker was convicted of committing over 30 years ago. All three convictions—one in 1982, one in 1985, and one in 1986—were controlled by the Florida Supreme Court’s definition of robbery in McCloud. Because Mr.

Walker could have been convicted of those crimes for using any degree of force, not just violent or substantial force, they should not qualify as violent felonies for purposes of Mr. Walker's ACCA sentence.

What must be difficult for Mr. Walker to make sense of is that the District Court initially got his case right. On October 24, 2016, the District Court issued an order granting Mr. Walker's motion to vacate his sentence. In reaching this result, that court noted that "robbery-by-sudden-snatching, which does not require the use of force or placing a victim in apprehension of the use of force, was prosecuted under section 812.13 until as late as 1997." Because Mr. Walker's convictions could have been for robbery-by-sudden-snatching, the District Court concluded they did not categorically qualify as predicate offenses to support an ACCA enhancement and vacated Mr. Walker's sentence. But just two weeks after the District Court issued its order and before Mr. Walker had been resentenced, a panel of this Court issued Fritts, which concluded, in spite of McCloud, that "the § 812.13 robbery statute has never included a theft or taking by mere snatching." 841 F.3d at 942. Relying on Fritts, the government filed a motion for reconsideration, which the District Court granted, reinstating Mr. Walker's ACCA sentence.

The Bureau of Prisons now estimates that Mr. Walker will be released from prison in 2023. If Mr. Walker's resentencing had been finalized before Fritts was

published, or if the Fritts panel had gone the way of the only other circuit to have considered this issue in a published decision, there is a good chance Mr. Walker would now be out of prison. But instead, Mr. Walker's sentence will continue for another five years. I hope our Court or the Supreme Court recognizes the error in Fritts in time to grant Mr. Walker some form of relief.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

March 19, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-13448-JJ
Case Style: Willie Walker v. USA
District Court Docket No: 1:16-cv-22372-JLK
Secondary Case Number: 1:09-cr-20602-JLK-1

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Tiffany A. Tucker, JJ at (404)335-6193.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna Clark
Phone #: 404-335-6161

OPIN-1 Ntc of Issuance of Opinion

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 16-22372-CV-JLK

WILLIE WALKER,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

**ORDER GRANTING MOVANT'S MOTION FOR CERTIFICATE OF
APPEALABILITY**

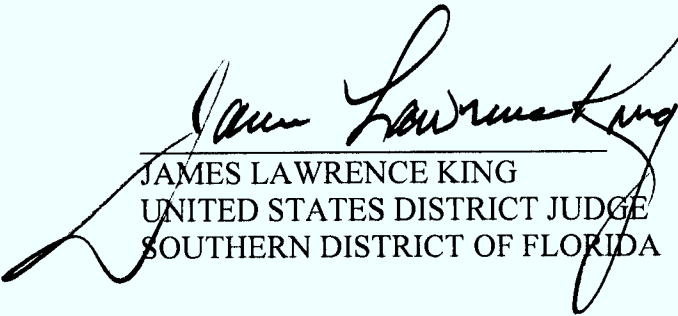
THIS MATTER comes before the Court upon Movant WILLIE WALKER's Motion for Certificate of Appealability (DE 19). No response was filed by the Government, and the time to do so has passed.

In the Motion, Movant requests a certificate of appealability upon the question of whether the Court erred by denying Movant's motion to vacate sentence in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015). After due consideration, the Court finds that a certificate of appealability is reasonable in this instance.

Accordingly, being otherwise fully advised in the premises of this matter, it is **ORDERED, ADJUDGED, and DECREED** that Movant's Motion for Certificate of Appealability (**DE 19**), be, and the same is, hereby **GRANTED**.

DONE and ORDERED in Chambers at the James Lawrence King Federal Justice

Building and United States Courthouse in Miami, Florida, this 27th day of July, 2017.



JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

Cc: All counsel of record

United States District Court
Southern District of Florida
MIAMI DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number - 1:09-CR-20602-KING

WILLIE WALKER

USM Number: 86374-004

Counsel For Defendant: Stewart G. Abrams
Counsel For The United States: John D. Couriel
Court Reporter: Larry Herr

The defendant was found guilty on Count 1 of the Indictment.
The defendant is adjudicated guilty of the following offense:

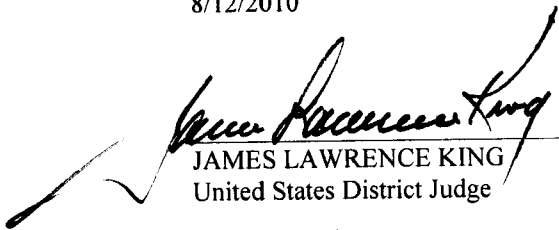
<u>TITLE/SECTION NUMBER</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18: USC § 922(g)(1) and 924 (e)(1)	Felon in possession of a firearm and ammunition	March 18, 2009	1

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

The defendant has been found not guilty on count 2.

It is ordered that the defendant must 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 must notify the court and United States attorney of any material changes in economic circumstances.

Date of Imposition of Sentence:
8/12/2010



JAMES LAWRENCE KING
United States District Judge

August 12, 2010

DEFENDANT: WILLIE WALKER
CASE NUMBER: 1:09-CR-20602-KING-

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **188 MONTHS**.

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

The Court makes the following recommendation to the Bureau of Prisons: The defendant be housed at FCI- Miami to be near his family.

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 U.S. Marshal

DEFENDANT: WILLIE WALKER
CASE NUMBER: 1:09-CR-20602-KING-

SUPERVISED RELEASE

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

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

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.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

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

If this judgment imposes a fine or a restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer **at least ten (10) days prior** to any change in residence or employment;
7. The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. The defendant shall notify the probation officer within **seventy-two (72) hours** of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: WILLIE WALKER
CASE NUMBER: 1:09-CR-20602-KING-

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall also comply with the following additional conditions of supervised release:

Substance Abuse Treatment - The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

DEFENDANT: WILLIE WALKER
CASE NUMBER: 1:09-CR-20602-KING-

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on the Schedule of Payments sheet.

Total Assessment

\$100.00

Total Fine

\$

Total Restitution

\$

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

DEFENDANT: WILLIE WALKER
CASE NUMBER: 1:09-CR-20602-KING-

SCHEDULE OF PAYMENTS

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

A. Lump sum payment of **\$100.00** due immediately, balance due

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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.

The assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

**U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716**

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

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.