

Petition Appendix

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 18a0088p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JIMMY DAVID MALONE,

Defendant-Appellant.

No. 17-5727

Appeal from the United States District Court
for the Eastern District of Tennessee at Knoxville.
No. 3:16-cr-00058-1—Thomas A. Varlan, Chief District Judge.

Argued: April 26, 2018

Decided and Filed: May 8, 2018

Before: GUY, SUTTON, and COOK, Circuit Judges.

COUNSEL

ARGUED: Robert R. Kurtz, STANLEY & KURTZ, PLLC, Knoxville, Tennessee, for Appellant. Luke A. McLaurin, UNITED STATES ATTORNEY’S OFFICE, Knoxville, Tennessee, for Appellee. **ON BRIEF:** Robert R. Kurtz, STANLEY & KURTZ, PLLC, Knoxville, Tennessee, for Appellant. Luke A. McLaurin, UNITED STATES ATTORNEY’S OFFICE, Knoxville, Tennessee, for Appellee.

OPINION

COOK, Circuit Judge. This appeal presents the latest episode in the saga of determining whether a prior conviction is a “violent felony” for purposes of the Armed Career Criminal Act’s

sentencing enhancement. Guided by canons of statutory construction, we hold that Kentucky second-degree burglary categorically qualifies as generic burglary under the ACCA and AFFIRM the sentence.

I.

Knoxville police pulled over Jimmy Malone for driving with unlit taillights. But his lights were the least of his worries. The handgun found under Malone's seat prompted a federal grand jury indictment on felon-in-possession charges. *See* 18 U.S.C. § 922(g)(1). A witness-intimidation charge came later after Malone bade his sister lie to officers about who bought the gun. *See id.* § 1512(b)(1). He pleaded guilty to all counts.

The Presentence Report classified Malone as an armed career criminal under the ACCA based on three prior convictions for “violent felonies” or “serious drug offenses”—Tennessee aggravated assault, federal drug trafficking, and Kentucky second-degree burglary. *See id.* § 924(e). He contested the classification, arguing only that his Kentucky conviction was incorrectly considered an ACCA predicate offense because the crime's elements are broader than generic burglary's. Overruling Malone's objection, the district court sentenced him to the ACCA-minimum 15 years' imprisonment for violating § 922(g). *See id.*

Malone appeals the determination that his Kentucky second-degree burglary conviction qualifies as an ACCA “violent felony.” We review the issue de novo. *United States v. Johnson*, 707 F.3d 655, 658 (6th Cir. 2013).

II.

The ACCA enumerates burglary as one of several “violent felonies” that can enhance a defendant's felon-in-possession sentence. 18 U.S.C. §§ 924(e)(1), (e)(2)(B)(ii). For the ACCA's purposes, however, not all burglaries are created equal. A state burglary offense constitutes “burglary” under the ACCA if the state burglary statute describes the “generic” version of the crime. *Descamps v. United States*, 570 U.S. 254, 257 (2013). Generic burglary “contains at least the following elements: an unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime.” *Taylor v. United States*, 495 U.S.

575, 598 (1990). Applying a “categorical approach,” we focus “on whether the elements of the crime of conviction sufficiently match the elements of generic burglary.” *Mathis v. United States*, 136 S. Ct. 2243, 2248 (2016).

In Kentucky, “[a] person is guilty of burglary in the second degree when, with the intent to commit a crime, he knowingly enters or remains unlawfully in a dwelling.” Ky. Rev. Stat. § 511.030(1). Here is the corresponding definitions section in full:

The following definitions apply in this chapter unless the context otherwise requires:

- (1) “Building,” in addition to its ordinary meaning, means any structure, vehicle, watercraft or aircraft:
 - (a) Where any person lives; or
 - (b) Where people assemble for purposes of business, government, education, religion, entertainment or public transportation.

Each unit of a building consisting of two (2) or more units separately secured or occupied is a separate building.

- (2) “Dwelling” means a building which is usually occupied by a person lodging therein.
- (3) “Premises” includes the term “building” as defined herein and any real property.

Id. § 511.010.

The parties disagree about the upshot of Kentucky’s definition of “dwelling.” Malone contends that the statutory definition of “dwelling” directs to the statutory definition of “building.” Given that “building” encompasses vehicles and movable enclosures, his argument goes, he relies on *Mathis* and insists that § 511.030 is broader than generic burglary. *See Mathis*, 136 S. Ct. at 2250 (explaining that Iowa’s burglary statute “covers more conduct than generic burglary” because it “reaches a broader range of places: ‘any building, structure, [or] land, water, or air vehicle’” (citation omitted, alterations in original)).

No, the Government contends, this is not the proper interpretation. That’s because of the statutory definition of “premises”—it references “‘building’ as defined herein.” Ky. Rev. Stat. § 511.010(3) (emphasis added). According to the Government, that “[t]he definition of

‘dwelling’ includes no such qualifier . . . signals that it refers to a ‘building’ in its ordinary sense” instead of its definitional one.

The district court agreed with the Government’s interpretation, and so do we. Malone’s proposal runs afoul of the “cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.” *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (quotation marks and citations omitted); *see also Daniel v. Cantrell*, 375 F.3d 377, 383 (6th Cir. 2004) (“We avoid interpretations of a statute which would render portions of it superfluous.”). In defining “premises,” the legislature explicitly references the statutory definition of “building” by using the qualifier “as defined herein.” Ky. Rev. Stat. § 511.010(3). Not so in its definition of “dwelling”—the “as defined herein” limiter is absent, as are the quotation marks punctuating the word “building.” *Id.* § 511.010(2). We presume these variations meaningful and deliberate; we will not adopt an interpretation neutralizing them. *See Russello v. United States*, 464 U.S. 16, 23 (1983) (“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” (citation omitted, alteration in original)); *United States v. Detroit Med. Ctr.*, 833 F.3d 671, 678 (6th Cir. 2016) (applying *Russello*’s instruction).

The statutory definition of “building” lends further support to the Government’s interpretation. “Building” includes, “*in addition to its ordinary meaning*, . . . any structure, vehicle, watercraft or aircraft” where a person lives or assembles. Ky. Rev. Stat. § 511.010(1) (emphasis added). So “building” ordinarily means something different than its statutory definition. This makes sense, given that “premises” specifically incorporates “‘building’ *as defined herein*” but “dwelling” does not. *Compare id.* § 511.010(3) (emphasis added), *with id.* § 511.010(2).

The conclusion we must draw from these distinctions is that “dwelling” incorporates only the “ordinary meaning” of “building.” *See Sanders v. Allison Engine Co., Inc.*, 703 F.3d 930, 938 (6th Cir. 2012) (cautioning that, because “there is no irrebuttable presumption of uniform usage” when a term is given a statutory definition, “a court should not presume that a term

defined by statute carries the same meaning every time it is used in a statute”). Construing the interplay between the definitions of “building,” “dwelling,” and “premises” differently would render portions of § 511.010 meaningless. And just as revising a statute by addition is outside our province, so too is revising by subtraction.

What’s more, caselaw corroborates this conclusion. The Government identifies two Kentucky Supreme Court decisions “confirm[ing] that the definition of ‘dwelling’ uses the term ‘building’ in its ordinary sense.” One, *Soto v. Commonwealth*, states that the statutory definitions of “building” and “dwelling” “indicat[e] that ‘building’ encompasses a broader category of structures than ‘dwelling.’” 139 S.W.3d 827, 869 (Ky. 2004). The other, *Colwell v. Commonwealth*, concludes per the statutory definitions that “every dwelling is a building, but every building is not a dwelling.” 37 S.W.3d 721, 726 (Ky. 2000). These mesh well with the Government’s interpretation—“dwellings” are “buildings” in the ordinary sense, not the definitional sense, and so “buildings” in the definitional sense are not necessarily “dwellings.” Plus, we have consistently held that a conviction under § 511.030 ticks the ACCA’s “violent felony” box as an enumerated offense. *See United States v. Jenkins*, 528 F. App’x 483, 485 (6th Cir. 2013) (stating that “[t]he elements of second-degree burglary in Kentucky largely track th[e] definition” of burglary advanced by the Supreme Court in *Taylor*, and that “a statute that limits its proscription to ‘dwellings’” satisfies the ACCA’s enumerated-offenses clause); *United States v. Walker*, 599 F. App’x 582, 583 (6th Cir. 2015) (mem.) (citing *Jenkins* to note that Kentucky second-degree burglary “is equivalent to the crime of burglary enumerated in the [ACCA]”); *see also United States v. Moody*, 634 F. App’x 531, 534 (6th Cir. 2015) (concluding that a Kentucky second-degree burglary conviction constitutes a crime of violence for a career-offender enhancement under the Sentencing Guidelines).

III.

Because a “dwelling” is a “building” only in the ordinary sense, § 511.030’s elements—knowingly entering or remaining unlawfully, in a “dwelling,” with the intent to commit a crime—match generic burglary’s. *See Descamps*, 570 U.S. at 257; *Taylor*, 495 U.S. at 598. That the Supreme Court recently granted certiorari to consider whether generic burglary can include burglary of a mobile structure used for overnight accommodation is beside the point; our

No. 17-5727

United States v. Malone

Page 6

interpretation of § 511.010 obviates that question in this case. *See United States v. Stitt*, 860 F.3d 854 (6th Cir. 2017) (en banc), *cert. granted*, 2018 WL 1901589 (U.S. Apr. 23, 2018) (No. 17-765). We therefore hold that Kentucky second-degree burglary categorically qualifies as generic burglary under the ACCA's enumerated-offenses clause. Malone having three convictions for ACCA predicates, we AFFIRM his sentence.

No. 17-5727

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 12, 2018
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JIMMY DAVID MALONE,

Defendant-Appellant.

)
)
)
)
)
)
)
)
)
)
)

ORDER

BEFORE: GUY, SUTTON, and COOK, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

United States District Court

Eastern District of Tennessee

UNITED STATES OF AMERICA
v.
JIMMY DAVID MALONE

JUDGMENT IN A CRIMINAL CASE

(For Offenses committed on or after November 1, 1987)

Case Number: 3:16-cr-00058-TAV-CCS-001

Robert Kurtz

Defendant's Attorney

THE DEFENDANT:

- ☒ pleaded guilty to count(s): 1-3 of the Superseding Indictment
- ☐ pleaded nolo contendere to count(s) which was accepted by the court.
- ☐ was found guilty on count(s) after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section	Nature of Offense	Date Violation Concluded	Count
18 U.S.C. § 922(g)(1), 18 U.S.C. § 924(e)(1)	Felon in Possession of a Firearm and Ammunition	March 31, 2016	1,2
18 U.S.C. § 1512(b)(1)	Intimidation with Intent to Influence Testimony in Official Proceeding	May 1, 2016	3

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and 18 U.S.C. 3553.

- ☐ The defendant has been found not guilty on count(s).
- ☐ All remaining counts as to this defendant in this case are dismissed on the motion of the United States.

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 the United States attorney of any material change in the defendant's economic circumstances.

June 20, 2017

Date of Imposition of Judgment

s/ Thomas A. Varlan

Signature of Judicial Officer

Thomas A Varlan, United States District Judge

Name & Title of Judicial Officer

June 23, 2017

Date

DEFENDANT: Jimmy David Malone
CASE NUMBER: 3:16-cr-00058-TAV-CCS-001

Judgment - Page 2 of 6

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **180 months** as to each of Counts One, Two and Three to run concurrently. Pursuant to USSG §5G1.3(c), this sentence is ordered to run concurrently with the pending charges in the General Sessions Court of Knox County, Tennessee in Docket Numbers @1146684, @1146685, @1146686, that appear to be relevant conduct to the instant offense.

- ☒ The court makes the following recommendations to the Bureau of Prisons: That the defendant receive 500 hours of substance abuse treatment from the BOP Institution Residential Drug Abuse Treatment Program and that he receive a mental health evaluation and assessment. It is further recommended that the defendant be designated to Manchester or Memphis
- ☒ 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: Jimmy David Malone
CASE NUMBER: 3:16-cr-00058-TAV-CCS-001

Judgment - Page 3 of 6

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 Years as to each of Counts One, Two, and 3 Years as to Count Three, to run concurrently.

The defendant shall 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 illegally 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 above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district or other specified geographic area without the permission of the Court or probation officer;
2. The defendant shall report to the probation officer in a manner and frequency directed by the Court or probation office;
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/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 days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered, or other places specified by the Court;
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 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 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;
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by his/her criminal record or personal history of characteristics and shall permit the probation officer to make such notification and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Jimmy David Malone
CASE NUMBER: 3:16-cr-00058-TAV-CCS-001

Judgment - Page 4 of 6

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in a program of testing and treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.
2. The defendant shall participate in a program of mental health treatment, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer. The defendant shall waive all rights to confidentiality regarding mental health treatment in order to allow release of information to the supervising United States Probation Officer and to authorize open communication between the probation officer and the mental health treatment provider.
3. The defendant shall take all medication prescribed by the treatment program as directed. If deemed appropriate by the treatment provider or the probation officer, the defendant shall submit to quarterly blood tests to determine whether the defendant is taking the medication as prescribed.
4. The defendant shall submit his or her person, property, house, residence, vehicle, papers, [computers (as defined in Title 18 U.S.C. § 1030(e)(1), other electronic communications or data storage devices or media,) or office, to a search conducted by a United States probation officer or designee. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his/her supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: Jimmy David Malone
CASE NUMBER: 3:16-cr-00058-TAV-CCS-001

Judgment - Page 5 of 6

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 6. The assessment is ordered in accordance with 18 U.S.C. 3013.

	Assessment	Fine	Restitution
Totals:	\$ 300.00	\$	\$

- ☐ The determination of restitution is deferred until __. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- ☐ The defendant shall make restitution (including community restitution) to the following payees in the amounts 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, if the United States is a victim, all other victims, if any, shall receive full restitution before the United States receives any restitution, and all restitution shall be paid to the victims before any restitution is paid to a provider of compensation, pursuant to 18 U.S.C. 3664.

Name of Payee	*Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
TOTALS:	\$__	\$__	

- ☐ If applicable, restitution amount ordered pursuant to plea agreement \$__
- ☐ The defendant shall pay interest on any fine or restitution of more than \$2500, unless the fine or restitution 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 the ☐ fine and/or ☐ restitution.
- ☐ The interest requirement for the ☐ fine and/or ☐ restitution is modified as follows:

DEFENDANT: Jimmy David Malone
CASE NUMBER: 3:16-cr-00058-TAV-CCS-001

Judgment - Page 6 of 6

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 \$300.00 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, ☐ F below); or
- C ☐ Payment in equal __ installments of \$__ over a period of __, to commence __ after the date of this judgment; or
- D ☐ Payment in equal __ installments of \$__ over a period of __, to commence __ after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within __ after release from imprisonment. The court will set the payment plan based on as assessment of the defendant's ability to pay at the time; or
- F ☒ Special instruction regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if the judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. Unless otherwise directed by the court, the probation officer, or the United States attorney, all criminal monetary penalties except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, shall be made to **U.S. District Court, 800 Market Street, Suite 130, Knoxville, TN 37902**. Payments shall be in the form of a check or a money order, made payable to U.S. District Court, with a notation of the case number including defendant number.

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:

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.

18 U.S. Code § 922 - Unlawful acts

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)

(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S. Code § 924 - Penalties

(e)

(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term “serious drug offense” means—

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term “violent felony” means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term “conviction” includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

Ky. Rev. Stat. Ann. § 511.010 – Definitions

The following definitions apply in this chapter unless the context otherwise requires:

(1) "Building," in addition to its ordinary meaning, means any structure, vehicle, watercraft or aircraft:

(a) Where any person lives; or

(b) Where people assemble for purposes of business, government, education, religion, entertainment or public transportation.

Each unit of a building consisting of two (2) or more units separately secured or occupied is a separate building.

(2) "Dwelling" means a building which is usually occupied by a person lodging therein.

(3) "Premises" includes the term "building" as defined herein and any real property.

Effective: July 15, 1980

History: Amended 1980 Ky. Acts ch. 376, sec. 1, effective July 15, 1980. -- Created 1974 Ky. Acts ch. 406, sec. 96, effective January 1, 1975.

Ky. Rev. Stat. Ann. § 511.030 - Burglary in the second degree

(1) A person is guilty of burglary in the second degree when, with the intent to commit a crime, he knowingly enters or remains unlawfully in a dwelling.

(2) Burglary in the second degree is a Class C felony.

Effective: July 15, 1980

History: Amended 1980 Ky. Acts ch. 376, sec. 3, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 125, sec. 2, effective June 17, 1978.
-- Created 1974 Ky. Acts ch. 406, sec. 98, effective January 1, 1975.