

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

VINCENT GREEN — PETITIONER  
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals Eleventh Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

VINCENT GREEN  
(Your Name)

21403-021 PO Box 33  
(Address)

Terre Haute, Indiana 47808  
(City, State, Zip Code)

(Phone Number)

**QUESTION(S) PRESENTED**

**PETITIONER'S SENTENCE AS AN ACCA OFFENDER MUST BE SET ASIDE, WHEREAS O.C.G.A. § 16-7-1 IS NOT A VIABLE ENUMERATED OFFENSE PREDICATE, BASED UPON THIS COURT'S STARE DECISIS.**

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

**[X] For cases from federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[X] is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

**[ ] For cases from state courts:**

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 28, 2018.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_A\_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_A\_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Georgia Code 2010 Georgia Code TITLE 16 -  
CRIMES AND OFFENSES CHAPTER 7- DAMAGE TO AND  
INTRUSION UPON PROPERTY ARTICLE 1-BURGLARY  
§ 16-7-1 Burglary--O.C.G.A. 16-7-1 (2010)  
16-7-1 Burglary

"(a) A person commits the offense of burglary when, without authority and with the intent to commit a felony or theft therein, he enters or remains within the dwelling house of another or any building, vehicle, railroad car, watercraft, or other such structure designed for use as the dwelling of another or enters or remains within any other building, railroad car, aircraft, or any room or any part thereof. A person convicted of the offense of burglary, for the first such offense, shall be punished by imprisonment for not less than one nor more than 20 years. For the purposes of this Code section, the term "railroad car" shall also include trailers on flatcars, containers on flatcars, trailers on railroad property, or containers on railroad property."

### Amendment V

"No person shall be held to answer for a capital, or otherwise infamous crime.... without due process of law....."

### Amendment VI

"In all criminal prosecutions, the accused shall enjoy the right.....and to have the Assistance of Counsel...."

## STATEMENT OF THE CASE

On or about February 3, 2016, Petitioner was charged in a two-count indictment of possession of firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(e) (Count 1); possession of a stolen firearm in violation of 18 U.S.C. § 922(j)(Count 2).

On or about February 9, 2017, Petitioner pleaded guilty to Count 1 and Count 2 was dismissed on the motion of the United States. Petitioner was sentenced to serve 180 months in prison. Petitioner now challenges the minimum 15 years sentence pursuant to ACCA, 18 U.S.C. § 924(e).

Petitioner was found to have three (3) ACCA Predicates, in that he suffered three (3) Burglary Conviction under Georgia Statute. O.C.G.A. § 16-7-1 (2010).

O.C.G.A. § 16-7-1 (2010) requires that:

"(a) A person commits the offense of burglary when, without authority and with the intent to commit a felony or theft therein, he enters or remains within the dwelling house of another or any building, vehicle, railroad car, watercraft, or other such structure designed for use as the dwelling of another or enters or remains within any other building, railroad car, aircraft, or any room or any part thereof. A person convicted of the offense of burglary, for the first such offense, shall be punished by imprisonment for not less than one nor more than 20 years. For the purposes of this Code section, the term "railroad car" shall also include trailers on flatcars, containers on flatcars, trailers on railroad property, or containers on railroad property."

Petitioner objected to the use of the Georgia Burglaries as ACCA predicates, arguing that under **Johnson V. United States** 135 S. Ct. 2551 (2015), they no longer qualified as enumerated offenses.

Without hearing, the District Court overruled the objections, and relying on 11th Circuit Precedent, determined that such were appropriate predicates. The Court thereupon entered judgment and an 180 month ACCA Term.

Petitioner timely sought an appeal to the Eleventh Circuit Court of Appeals, which appeal was denied on March 28, 2018.

Petitioner now seeks a Writ of Certiorari to the Eleventh Circuit, as recent Decisions of this Court make clear that **O.C.G.A. § 16-7-1 (2010)** is not a viable ACCA predicate, and as such Petitioner's maximum sentence could be no more than ten (10) years. **18 U.S.C. § 924 a.**

## REASONS FOR GRANTING THE PETITION

PETITIONER'S SENTENCE AS AN ACCA OFFENDER MUST BE SET ASIDE, WHEREAS O.C.G.A. § 16-7-1 IS NOT A VIABLE ENUMERATED OFFENSE PREDICATE, BASED UPON THIS COURT'S STARE DECISIS.

The ACCA prescribes a 15-year mandatory minimum sentence if a defendant is convicted of being a felon in possession of a firearm following three prior convictions for a "violent felony." **Mathis v. United States**, 136 S. Ct. at 244 (2016)(quoting § 924(e)(1)). Absent that sentence enhancement, the felon-in-possession statute sets a 10-year maximum penalty. **Id.** § 924(a)(2).

At the time of Petitioner's sentencing, the ACCA defined "violent felony" as "any crime punishable by imprisonment for a term exceeding one year" that 1) "has as an element the use, attempted use or threatened use of physical force against the person of another;" 2) "is burglary, arson, or extortion, [or] involves the use of explosives;" or 3) "otherwise involves conduct that presents a serious potential risk of physical injury to another." § 924(e)(2)(B). These three "clauses" are respectively known as 1) the elements clause, 2) the enumerated clause, and 3) the residual clause. In **Johnson v. United States**, 135 S. Ct. 2551 (2015), the Supreme Court ruled that the residual clause was unconstitutionally vague.

The question is whether Georgia's burglary convictions are qualifying predicate offenses. For the reason explained below, they are not.

Petitioner has three conviction for burglary in Georgia. Under the ACCA, burglary is an enumerated violent felony. However, merely because the state statute is labeled a "burglary" does not mean it will constitute a "violent felony." **Taylor v. United States**, 495 US 575 (1990). Instead, a prior burglary can only constitute a "violent felony" if it meets the generic definition of burglary. **Id.** The Supreme Court held that generic burglary is the "unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." **Id.** at 599. "A few States burglary statutes... define burglary more broadly, e.g., by eliminating the requirement that the entry be unlawful, or by including places, such as automobiles and vending machines, other than buildings." **Taylor**, 495 U.S. at 600.

Georgia's burglary statute states that:

"(a) A person commits the offense of burglary when, without authority and with the intent to commit a felony or theft ~~therein~~, he enters or remains within the dwelling house of another or any building, vehicle, railroad car, watercraft, or other such structure designed for use as the dwelling of another or enters or remains within any other building, railroad car, aircraft, or any room or any part thereof. A person convicted of the offense of burglary, for the first such offense, shall be punished by imprisonment for not less than one nor more than 20 years. For the purposes of this Code section, the term "railroad car" shall also include trailers on flatcars, containers on flatcars, trailers on railroad property, or containers on railroad property."

The Eleventh Circuit Court of Appeals has ruled the **O.C.G.A. § 16-7-1** is a "violent" ACCA Predicate. **United States v. Brundidge**, 708 Fed. Appx. 608 (11th Cir. 2017).

**Brundidge** addressed the 2011 version of **O.C.G.A. § 16-7-1** and relying on **United States v. Gundy**, 842 F. 3d 1156 (11th Cir. 2016), found that, under a plain-error analysis there was no Circuit case that caused the Court to revisit the prior ACCA determination. *Id.*

Assertedly, this decision, as is the finding that **§ 16-7-1** is an ACCA predicate has been overruled by this Court's decision in **Mathis v. United States**, 136 S. Ct. 2243 (2016). Plainly stated, because **§ 16-7-1 (2010)** allowed a Burglary conviction for entry into a dwelling house of another or any building, vehicle, railroad car, watercraft or other such structure. **§ 16-7-1**.

The variance from Generic Burglary to include these other means of committing the offense can no longer support a finding that **§ 16-7-1** meets the definition of generic burglary, and therefore may serve as proper ACCA predicates.

Instead, it is now clear that **§ 16-7-1** is broader than generic Burglary, and the Eleventh Circuit's decision below is in conflict with this Court's decision in **Mathis**.

Accordingly, the a Writ of Certiorari should issue to finally determine whether **O.C.G.A. § 16-7-1** is a proper ACCA predicate.

The Petition for Writ or Certiorari to the Eleventh Circuit should be granted, and the matter remanded thereto for resentencing of Petitioner under 18 U.S.C. § 924 a, and the sentence under 18 U.S.C. § 924 (e)(2)(B)(ii) vacated.

### **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Vincent Green

Date: May - 31 - 18