

Appendix A-1

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13482
Non-Argument Calendar

D.C. Docket No. 3:15-cr-00185-MMH-PDB-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHELDON LAMONT JACKSON,

Defendant-Appellant.

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

(June 6, 2018)

Before TJOFLAT, NEWSOM and FAY, Circuit Judges.

PER CURIAM:

Sheldon Lamont Jackson appeals his 180-month sentence for possession of a firearm as a convicted felon. We affirm.

I. BACKGROUND

In January 2015, a Jacksonville Sheriff's officer stopped a vehicle that Jackson was operating after seeing it driving in the wrong direction. Jackson gave the officer a copy of his driver's license, which was suspended. Tawama Thompson and Pricina Berry were passengers in the car. Jackson consented to a search of his vehicle, which revealed a nine-millimeter pistol. Jackson stated that the firearm was not his and that he did not know how it ended up under the driver's seat. A subsequent check revealed that the firearm had been reported stolen in an automobile burglary. Jackson was a convicted felon with multiple prior convictions.

A federal grand jury indicted Jackson on one count of possession of a firearm as a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(e). Jackson pled guilty to the charged conduct pursuant to a written plea agreement. The Presentence Investigation Report ("PSI") summarized the above facts and stated that Jackson had obstructed, or attempted to obstruct, the administration of justice with respect to Thompson's grand jury testimony. It also stated that, while

Jackson had admitted to his guilt, he did not qualify for a reduction for acceptance of responsibility based on his repeated attempts to dissuade Thompson from testifying before the grand jury.

The PSI applied a base offense level of 14, a two-level enhancement because the firearm Jackson possessed was stolen and a two-level enhancement for obstruction of justice.¹ The PSI outlined three Florida felony convictions that served as predicate offenses for an Armed Career Criminal Act (“ACCA”) enhancement: (1) a 1995 conviction for possession with intent to sell cocaine; (2) a 1996 conviction for possession with intent to distribute cocaine; and (3) a 2001 conviction for resisting an officer with violence in violation of section 843.01 of the Florida Statutes. Based on these convictions, the PSI designated Jackson as an armed career criminal and established his offense level to be 33.² The PSI stated that Jackson’s criminal history category was III based on his criminal history score but became IV based on his ACCA designation. Jackson’s statutory term of imprisonment was 15 years to life. Based on a total offense level of 33 and a criminal history category of IV, Jackson’s guideline range was 188 to 235 months.

Jackson objected to the obstruction-of-justice enhancement and the lack of a reduction for acceptance of responsibility. At the sentencing hearing, the district

¹ See U.S.S.G. §§ 2K2.1(a)(6), (b)(4)(A), 3C1.1.

² See U.S.S.G. § 4B1.4(b)(3)(B).

court noted that the government did not oppose Jackson receiving a two-level reduction for acceptance of responsibility. After hearing testimony from Thompson and considering the parties' arguments, the district court determined that Jackson had willfully obstructed justice by attempting to influence Thompson's testimony and overruled his objection to the two-level enhancement. However, because the government knew of this conduct before it entered into the plea agreement, the district court determined that Jackson qualified for a two-level reduction for acceptance of responsibility.

Jackson also argued that resisting arrest with violence was not a violent felony. After hearing arguments, the district court determined that Florida courts have said that violence is a necessary element of resisting arrest with violence, whether actual, attempted, or threatened. The court stated that, to the extent that section 843.01 was divisible, a conviction for resisting arrest with actual violence, or offering to do so, qualified as a violent felony. The district court determined that, with the benefit of a two-level reduction for acceptance of responsibility, Jackson's guideline range would ordinarily be 151 to 188 months of imprisonment, but became 180 to 188 months due to the statutory minimum.

The government entered into evidence the three judgments supporting Jackson's ACCA designation. The district court noted that it had reviewed Jackson's statement in his sentencing memorandum and sentenced him to the

statutory minimum of 180 months of imprisonment and 2 years of supervised release. Jackson did not raise any new objections to his sentence.

On appeal, Jackson argues that the district court erred in determining that his prior Florida conviction for resisting arrest with violence, in violation of section 843.01, qualifies as a violent felony under the ACCA's elements clause because the ACCA and section 843.01 require different mens rea and section 843.01 does not require the necessary force.

II. DISCUSSION

We review *de novo* whether a defendant's prior convictions qualify as violent felonies under the ACCA. *United States v. Joyner*, 882 F.3d 1369, 1377 (11th Cir. 2018). Under our prior precedent rule, we are bound to follow prior binding precedent unless and until we overrule it while sitting en banc or the Supreme Court does. *United States v. Vega-Castillo*, 540 F.3d 1235, 1236 (11th Cir. 2008). The prior precedent rule applies and binds a subsequent panel to its decision even if existing precedent was overlooked or misinterpreted when the prior precedent was issued. *United States v. Fritts*, 841 F.3d 937, 942 (11th Cir. 2016), *cert. denied*, 137 S. Ct. 2264 (2017). Even if the prior panel's decision is flawed, a later panel lacks the authority to disregard it. *United States v. Golden*, 854 F.3d 1256, 1257 (11th Cir.), *cert. denied*, 138 S. Ct. 197 (2017).

The ACCA provides that a defendant who violates 18 U.S.C. § 922(g) and has three prior convictions for a violent felony or serious drug offense is subject to a 15-year statutory minimum sentence. 18 U.S.C. § 924(e)(1). The ACCA defines a violent felony as any crime punishable by more than one year in prison 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.

18 U.S.C. § 924(e)(2)(B)(i), (ii). The first prong of this definition is sometimes referred to as the “elements clause,” while the second prong contains the “enumerated crimes.” *United States v. Owens*, 672 F.3d 966, 968 (11th Cir. 2012).

Under Florida law, resisting arrest with violence constitutes a third-degree felony when an individual “knowingly and willfully resists, obstructs, or opposes any officer . . . in the lawful execution of any legal duty, by offering or doing violence to the person of such officer.” Fla. Stat. § 843.01. We have held that the Florida offense of resisting arrest with violence, in violation section 843.01, categorically qualifies as a crime of violence under U.S.S.G. § 2L1.2, which had the same definition as the elements clause in § 4B1.2 and the ACCA. *United States v. Romo-Villalobos*, 674 F.3d 1246, 1247 (11th Cir. 2012). We explained that Florida case law showed that violence was a necessary element of the offense and that it could not be committed by a de minimis use of force. *Id.* We also

determined that a conviction under section 843.01 requires a general intent, which was sufficient for the elements clause. *Id.* at 1251.

In *Hill*, we reaffirmed our conclusion in *Romo-Villalobos* that a Florida conviction for resisting an officer with violence categorically qualifies as a violent felony under the elements clause of the ACCA. *United States v. Hill*, 799 F.3d 1318, 1322-23 (11th Cir. 2015). We also considered that Florida appellate courts have held that violence is a necessary element of resisting arrest with violence. *Id.* In *Joyner*, we recently reaffirmed the holding in *Hill* that resisting arrest with violence is categorically a violent felony under the ACCA's elements clause. 882 F.3d at 1377.

Here, the district court did not err in determining that Jackson's prior Florida conviction for resisting arrest with violence qualified as a violent felony under the ACCA. We have repeatedly held that convictions under section 843.01 are categorically violent felonies under the ACCA's elements clause. *Joyner*, 882 F.3d at 1377; *Hill*, 799 F.3d at 1322-23; *Romo-Villalobos*, 674 F.3d at 1249. We have specifically determined that resisting arrest with violence has the requisite force and mens rea to qualify as a violent felony. *Romo-Villalobos*, 674 F.3d at 1249. Jackson's argument that *Romo-Villalobos* and *Hill* were wrongly decided or overlooked old Florida case law are not grounds for avoiding the prior panel precedent rule. *Golden*, 854 F.3d at 1257; *Fritts*, 841 F.3d at 942; *Vega-Castillo*,

540 F.3d at 1236. Because we are bound by our prior precedent, we conclude that the district court did not err in determining that Jackson's prior Florida conviction for resisting arrest with violence qualified as a violent felony under the ACCA; we affirm Jackson's 180-month sentence.

AFFIRMED.

**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

June 06, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-13482-HH
Case Style: USA v. Sheldon Jackson
District Court Docket No: 3:15-cr-00185-MMH-PDB-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 Christopher Bergquist, HH at 404-335-6169.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6161

OPIN-1 Ntc of Issuance of Opinion

Appendix A-2

**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

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January 18, 2019

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-13482-HH
Case Style: USA v. Sheldon Jackson
District Court Docket No: 3:15-cr-00185-MMH-PDB-1

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Christopher Bergquist/aw, HH
Phone #: 404-335-6169

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13482
Non-Argument Calendar

D.C. Docket No. 3:15-cr-00185-MMH-PDB-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHELDON LAMONT JACKSON,

Defendant-Appellant.

Appeals from the United States District Court
for the Middle District of Florida

Before ED CARNES, Chief Judge, TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDAN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, and GRANT, Circuit Judges.

BY THE COURT:

A petition for rehearing having been filed and a member of this Court in active service having requested a poll on whether this case should be reheard by the Court sitting en banc, and a majority of the judges in active service on this Court having voted against granting a rehearing en banc, it is ORDERED that this case will not be reheard en banc.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13482-HH

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

SHELDON LAMONT JACKSON,

Defendant - Appellant.

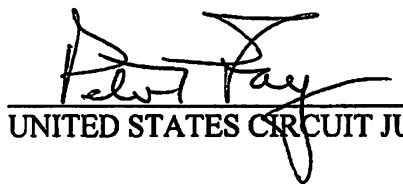
Appeal from the United States District Court
for the Middle District of Florida

BEFORE: TJOFLAT, NEWSOM and FAY, Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by Sheldon Lamont Jackson is DENIED.

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

ORD-41