

No. 18-9364

IN THE SUPREME COURT OF THE UNITED STATES

JAVONTAE TYREE STREET, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner's prior convictions for breaking and entering, in violation of North Carolina General Statute § 14-54 (2013 & 2015), constitute convictions for "burglary" under the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e) (2) (B) (ii).

RELATED PROCEEDINGS

United States Court of Appeals (4th Cir.):

United States v. Street, No. 18-4279 (Feb. 19, 2019)

United States District Court (M.D.N.C.):

United States v. Street, No. 17-cr-246 (Apr. 26, 2018)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-3a) is not published in the Federal Reporter but is reprinted at 756 Fed. Appx. 310.

JURISDICTION

The judgment of the court of appeals (Pet. App. 4a) was entered on February 19, 2019. The petition for a writ of certiorari was filed on May 20, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Middle District of North Carolina, petitioner was convicted on one count of unlawful possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2). Pet. App. 5a. He was sentenced to 180 months of imprisonment, to be followed by five years of supervised release. Id. at 6a-7a. The court of appeals affirmed. Id. at 1a-3a.

1. On December 4, 2016, law enforcement attempted to serve outstanding arrest warrants at a residence in Graham, North Carolina. Presentence Investigation Report (PSR) ¶ 5. Officers knocked on the door and heard people inside, but no one answered. Ibid. Officers then hailed the occupants using a patrol vehicle's public address system. Ibid. After several minutes, four individuals, including petitioner, came outside. Ibid. Officers obtained permission to search the residence. PSR ¶ 6. When the officers entered, they detected the smell of marijuana. Ibid. In one of the bedrooms, an officer observed a mattress and box springs that had been disturbed. Ibid. The officer lifted the mattress and discovered a 9mm-caliber firearm. Ibid.

Officers arrested three of the occupants -- petitioner, Tiana Menefee, and Jaheem Watson -- on outstanding warrants. PSR ¶ 6. Menefee denied owning the firearm and reported that petitioner and Watson had been present in the bedroom where the firearm was

located. Ibid. Watson stated that the firearm belonged to petitioner. PSR ¶ 7. Finally, the lessee of the residence, Michella Edwards, relayed information confirming that petitioner owned the firearm. PSR ¶¶ 5, 7.

2. A federal grand jury indicted petitioner on one count of unlawful possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2). PSR ¶ 1. Petitioner pleaded guilty pursuant to a written plea agreement. PSR ¶ 3.

Under 18 U.S.C. 924(a)(2), the default term of imprisonment for the offense of unlawful possession of a firearm following a felony conviction is zero to 120 months. The Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e)(1), increases that penalty to a term of 15 years to life if the defendant has "three previous convictions * * * for a violent felony or a serious drug offense." The ACCA defines a "'violent felony'" to include, inter alia, any crime punishable by more than one year that "is burglary, arson, or extortion, [or] involves use of explosives." 18 U.S.C. 924(e)(2)(B)(ii). Although the ACCA does not define "burglary," this Court in Taylor v. United States, 495 U.S. 575 (1990), construed the term to include "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." Id. at 599.

In this case, the Probation Office determined that petitioner had nine prior convictions that qualified as violent felonies under the ACCA: eight for breaking and entering under North Carolina General Statute § 14-54 (2013 & 2015), and one for second-degree burglary under North Carolina General Statute § 14-51 (2013). PSR ¶¶ 19, 30, 32, 34. It accordingly reported that petitioner was subject to a statutory minimum sentence of 15 years of imprisonment. PSR ¶ 66. And it calculated petitioner's advisory Guidelines sentencing range at 180 to 188 months. PSR ¶ 67.

At sentencing, petitioner objected to the ACCA classification, arguing that his prior North Carolina convictions for breaking and entering did not qualify as "violent felonies" under the ACCA. Sent. Tr. 2; see also Addendum to PSR. Petitioner acknowledged, however, a series of Fourth Circuit decisions that had rejected that argument. Sent. Tr. 2-3. The district court accordingly overruled petitioner's objection and accepted the Probation Office's Guidelines range calculations. Id. at 3. The court sentenced petitioner to 180 months of imprisonment, to run concurrently with an undischarged state sentence that petitioner was serving. Id. at 10.

3. The court of appeals affirmed in an unpublished per curiam opinion. Pet. App. 1a-3a. The court adhered to its earlier decision in United States v. Mungro, 754 F.3d 267, 272 (4th Cir.), cert. denied, 135 S. Ct. 734 (2014), which had determined that the

North Carolina breaking-and-entering offense "qualified as a violent felony under the ACCA." Pet. App. 3a. And the court reaffirmed that the offense "sweeps no broader than generic burglary's 'building' element" identified in Taylor. Ibid. (citation omitted).

ARGUMENT

Petitioner contends (Pet. 4-7) that the court of appeals erred in interpreting North Carolina General Statute § 14-54 (2013 & 2015) to criminalize only generic "burglary" under the ACCA. The court's unpublished decision (Pet. App. 1a-3a) in this case is correct and does not conflict with any decision of this Court or of another court of appeals. This Court recently denied review of a petition for a writ of certiorari presenting the same question, see Alexis v. United States, 138 S. Ct. 1547 (2018) (No. 17-7270), and the same result is warranted here.

1. The court of appeals correctly determined (Pet. App. 2a-3a) that a conviction under North Carolina General Statute § 14-54 constitutes a conviction for "generic" burglary under a straightforward application of Taylor v. United States, 495 U.S. 575 (1990). Taylor held that Congress intended "burglary" in the ACCA to have a "uniform definition" that encompasses any "unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime." Id. at 580, 598. Taylor instructed courts to apply a "categorical approach" to

determine whether a prior conviction meets that definition, examining "the statutory definition[]" of the previous crime in order to determine whether it substantially corresponds to the "generic" form of burglary referenced in the ACCA. Id. at 600.

Employing that approach, the court of appeals correctly determined that North Carolina General Statute § 14-54, which punishes the breaking and entering of "any building" with the intent to commit a crime, "sweeps no broader" than Taylor's definition of ACCA "burglary," Pet. App. 3a, which reaches the unlawful or unprivileged entry into a "building or structure," 495 U.S. at 599. The North Carolina statute defines a "'building'" as "any dwelling, dwelling house, uninhabited house, building under construction, building within the curtilage of a dwelling house, and any other structure designed to house or secure within it any activity or property." N.C. Gen. Stat. § 14-54(c) (2014 & 2015). As the court of appeals has previously observed, "North Carolina courts construe * * * [the] 'building' element in a manner that tracks generic burglary's 'building' element." United States v. Beatty, 702 Fed. Appx. 148, 150 (4th Cir. 2017). In making that observation, the court of appeals cited (ibid.), in particular, State v. Gamble, 286 S.E.2d 804, 806 (N.C. Ct. App. 1982), which limited the definition of "building" to "that which has -- or is intended to have -- one or more walls and a roof."

The court of appeals also has previously differentiated between the North Carolina breaking-and-entering offense and state burglary statutes that more broadly prohibit "the breaking and entering of vehicles, boats, aircrafts, and other watercrafts." Beatty, 702 Fed. Appx. at 150 n.2 (citing, e.g., Mathis v. United States, 136 S. Ct. 2243, 2250 (2016)). In doing so, the court explained that North Carolina has enacted a separate statute that punishes the "breaking and entering of vehicles, boats, aircrafts, and other watercrafts." Ibid. (citing N.C. Gen. Stat. § 14-56 (2017)). Reasoning that the breaking-and-entering statute at issue here, N.C. Gen. Stat. § 14-54 (2013 & 2015), accordingly does not itself reach those locations, the court determined that it "sweeps no broader than generic burglary's 'building' element." Beatty, 702 Fed. Appx. at 150 (citing Taylor, 495 U.S. at 598).

2. Petitioner nonetheless asserts (Pet. 4-6) that the North Carolina breaking-and-entering statute sweeps beyond Taylor's definition of generic "burglary," on the theory that it could extend to nonpermanent or mobile structures like "food trucks, mobile produce trucks, florist vehicles, ambulances, mobile barbershops, party transportation vehicles, mobile car detailing, mobile pet-grooming, cleaning service vehicles, [and] storage trailers." Pet. 5.

The court of appeals, however, has previously construed the term "building" in North Carolina's breaking-and-entering statute

to exclude such nonpermanent or mobile locations. In doing so, the court cited (see Beatty, 702 Fed. Appx. at 150 n.2) decisions from the North Carolina appellate courts explaining that mobile homes or trailers may qualify as “building[s]” for purposes of North Carolina General Statute § 14-54 only “if under the circumstances of their use and location at the time in question they have lost their character of mobility and have attained a character of permanence.” State v. Bost, 286 S.E.2d 632, 635 (N.C. Ct. App. 1982); see also State v. Douglas, 282 S.E.2d 832, 834 (N.C. Ct. App. 1981) (“The items listed in [N.C. Gen. Stat. §] 14-54 [(1969)] denote the qualities of permanence and immobility.”).*

Petitioner disputes (Pet. 5-6) that construction of the North Carolina breaking-and-entering statute. But none of the state decisions petitioner cites (Pet. 6) involved the unlawful entry of a nonpermanent or mobile structure, and thus none supports his argument that the North Carolina provision covers such structures. See Bost, 286 S.E.2d at 634 (burglary of trailer that “was ‘blocked up’ and not characterized by mobility”); State v. Batts, 617 S.E.2d 724, 2005 WL 2128956, at *3 (N.C. Ct. App. 2005) (burglary of trailer that “was a permanent, locked storage facility”); State v.

* Because the North Carolina breaking-and-entering statute does not cover nonpermanent or mobile structures, this case does not directly implicate the Court’s decision in United States v. Stitt, 139 S. Ct. 399 (2018), which held that “the [ACCA] term ‘burglary’ includes burglary of a structure or vehicle that has been adapted or is customarily used for overnight accommodation.” Id. at 403-404.

Davis, 580 S.E.2d 98, 2003 WL 21180789, at *3 (N.C. Ct. App. 2003) (Tbl.) (burglary of trailer that "had no wheels and sat flat on the ground").

More fundamentally, while the court of appeals was obligated to construe the North Carolina breaking-and-entering statute in the context of applying the ACCA, its construction is fundamentally a question of state law. As such, it does not warrant this Court's review. This Court has a "settled and firm policy of deferring to regional courts of appeals in matters that involve the construction of state law," and petitioner provides no reason to deviate from that practice in this case. Bowen v. Massachusetts, 487 U.S. 879, 908 (1988); see also, e.g., Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 16 (2004). Review is particularly unwarranted here because petitioner does not allege that the decision below conflicts with a decision from any other court of appeals. Indeed, no court of appeals has held that North Carolina General Statute § 14-54 (2013 & 2015) covers mobile structures.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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