

Appendix

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-15404

D.C. Docket No. 3:14-cr-00021-TJC-PDB-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MICHAEL HOLMES,

Defendant - Appellant.

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

(May 29, 2019)

Before WILSON, JILL PRYOR and TALLMAN,* Circuit Judges.

PER CURIAM:

* Honorable Richard C. Tallman, United States Circuit Judge for the Ninth Circuit, sitting by designation.

The government charged Michael Homes by indictment with possession of firearms by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e), and possession with intent to distribute cocaine and cocaine base, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C). Holmes moved to suppress on Fourth Amendment grounds evidence that the government obtained when law enforcement conducted a knock-and-talk investigation at Holmes's residence. The district court denied the motion to suppress. The court ruled that no Fourth Amendment violation occurred when law enforcement conducted the knock-and-talk because Holmes failed to revoke the implied license that allowed law enforcement to approach his residence and knock. After a bench trial, Holmes was found guilty. The district court enhanced Holmes's sentence pursuant to the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e), based in part on its ruling that his 1997 Georgia burglary conviction was for a violent felony.

On appeal, Holmes challenges the district court's denial of his motion to suppress and its ruling that his Georgia burglary conviction was for a violent felony, qualifying him for an ACCA enhancement. After careful review and with the benefit of oral argument, we affirm the district court's well-reasoned opinion denying Holmes's motion to suppress. And we conclude, as Holmes concedes, that our decision in *United States v. Gundy*, 842 F.3d 1156 (11th Cir. 2016),

forecloses his argument that his 1997 Georgia burglary conviction was not for a violent felony.

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

May 29, 2019

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-15404-JJ
Case Style: USA v. Michael Holmes
District Court Docket No: 3:14-cr-00021-TJC-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 Tiffany A. Tucker, JJ at (404)335-6193.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna Clark
Phone #: 404-335-6151

OPIN-1 Ntc of Issuance of Opinion

**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.call.uscourts.gov

July 25, 2019

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-15404-JJ
Case Style: USA v. Michael Holmes
District Court Docket No: 3:14-cr-00021-TJC-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: Tiffany A. Tucker, JJ/lt
Phone #: (404)335-6193

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-15404-JJ

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MICHAEL HOLMES,

Defendant - Appellant.

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

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: WILSON, JILL PRYOR and TALLMAN,* Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

ENTERED FOR THE COURT:

/s/ Jill Pryor

UNITED STATES CIRCUIT JUDGE

*Honorable Richard C. Tallman, United States Circuit Judge for the Ninth Circuit, sitting by designation.

**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

August 02, 2019

Clerk - Middle District of Florida
U.S. District Court
300 N HOGAN ST
JACKSONVILLE, FL 32202

Appeal Number: 17-15404-JJ
Case Style: USA v. Michael Holmes
District Court Docket No: 3:14-cr-00021-TJC-PDB-1

A copy of this letter, and the judgment form if noted above, but not a copy of the court's decision, is also being forwarded to counsel and pro se parties. A copy of the court's decision was previously forwarded to counsel and pro se parties on the date it was issued.

The enclosed copy of the judgment is hereby issued as mandate of the court. The court's opinion was previously provided on the date of issuance.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Lois Tunstall
Phone #: (404) 335-6191

Enclosure(s)

MDT-1 Letter Issuing Mandate

**UNITED STATES COURT OF APPEALS
For the Eleventh Circuit**

No. 17-15404

District Court Docket No.
3:14-cr-00021-TJC-PDB-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MICHAEL HOLMES,

Defendant - Appellant.

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

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: May 29, 2019
For the Court: DAVID J. SMITH, Clerk of Court
By: Djuanna Clark