

IN THE
Supreme Court of the United States

AFRIES SANDONICAES MAHAM,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether North Carolina Breaking and Entering, which criminalizes the breaking or entering into “any other structure designed to house or secure within it any activity or property,” is categorically broader than Armed Career Criminal Act burglary.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Afries Sandonicaes Maham respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's Opinion affirming Mr. Maham's conviction and sentence is attached at Pet. App. 1a and is reported at 767 F. App'x. 275 (4th Cir. 2019). The Fourth Circuit Order denying a timely petition for rehearing and rehearing en banc is attached at Pet. App. 4a.

LIST OF PRIOR PROCEEDINGS

1. *United States v. Afries Sandoicaes Maham*, No 5:17-cr-266-D, United States District Court for the Eastern District of North Carolina.
Final judgment entered on June 13, 2018.
2. *United States v. Afries Sandoicaes Maham*, No. 18-4418, United States Court of Appeals for the Fourth Circuit.

Opinion issued on May 23, 2019.

Petition for rehearing en banc denied on July 8, 2019.

JURISDICTION

The Fourth Circuit issued its opinion on May 23, 2019. Pet. App. 1a. The Fourth Circuit denied Mr. Maham's timely petition for rehearing and rehearing en banc on July 8, 2019. Pet. App. 4a. On October 1, 2019, The Chief Justice granted Mr. Robinson's application for an extension of time to file this petition and extended the time until December 6, 2019. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

N.C. Gen. Stat. § 14-54:

- (a) Any person who breaks or enters any building with intent to commit any felony or larceny therein shall be punished as a Class H felon.
- ...
- (c) As used in this section, "building" shall be construed to include 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.

18 U.S.C. § 924(e)(2)(B)(ii):

[T]he term "violent felony" means any crime punishable by imprisonment for a term exceeding one year . . . that is burglary, arson, [or] extortion, [or] involves use of explosives.

STATEMENT OF THE CASE

Both the facts and the unpublished per curiam panel decision in this case are straightforward. In August, 2017, a grand jury sitting in the Eastern District of

North Carolina indicted Mr. Afries Maham on one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). Mr. Maham pleaded guilty.

At sentencing, the parties disputed whether Mr. Maham was an Armed Career Criminal. He contended that his prior convictions for North Carolina Breaking and Entering were not “violent felonies” as required by the Act. The district court overruled Mr. Maham’s objection and sentenced him as an Armed Career Criminal.

The district court then sentenced him to the mandatory minimum fifteen-year Armed Career Criminal sentence. Mr. Maham timely appealed, raising the sole argument that North Carolina Breaking or Entering is not an ACCA predicate because it criminalizes the breaking or entering of vehicles, making it broader than ACCA “burglary.” A panel of the Fourth Circuit issued an unpublished per curiam decision disagreeing and holding that Mr. “Maham fails to demonstrate that North Carolina breaking or entering is broader than generic burglary and thus not categorically a violent felony.” Slip. Op. at 3. The Fourth Circuit then denied rehearing and this petition follows.

REASONS FOR GRANTING THE PETITION

This Court should grant review because this case presents an important question of federal law that this Court should decide. Sup. Ct. R 10(c).

THIS COURT SHOULD GRANT REVIEW TO DECIDE WHETHER NORTH CAROLINA BREAKING AND ENTERING, WHICH CRIMINALIZES THE BREAKING OR ENTERING INTO "ANY OTHER STRUCTURE DESIGNED TO HOUSE OR SECURE WITHIN IT ANY ACTIVITY OR PROPERTY," IS BROADER THAN ARMED CAREER CRIMINAL ACT BURGLARY.

ACCA defines an Armed Career Criminal in relevant part as "a person who . . . has three previous convictions . . . for a violent felony." 18 U.S.C. § 924(e)(1). It defines a violent felony as

any crime punishable by imprisonment for a term exceeding one year . . . 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;

Id. § 924(e)(2)(B).¹

Because all of the predicate convictions on which the district court relied to sentence Mr. Robinson as an Armed Career Criminal are violations of North Carolina Breaking or Entering, this petition presents the narrow question of whether that crime constitutes a violent felony.

¹ The portion of the definition that reads "otherwise involves conduct that presents a serious potential risk of physical injury to another," is not applicable because it is unconstitutionally vague. *Johnson v. United States*, 135 S. Ct. 2551 (2015).

In determining whether a crime is a violent felony, courts must apply a categorical approach, “consider[ing] the offense generically . . . examin[ing] it in terms of how the law defines the offense, and not in terms of how an individual defendant might have committed it on a particular occasion.” *Begay v. United States*, 553 U.S. 137, 141 (2008). When using this approach to determine whether a prior offense qualifies as one of the offenses enumerated in the violent crime definition, the court “focus[es] solely on whether the elements of the crime of conviction sufficiently match the elements of [the listed] generic [crime], while ignoring the particular facts of the case.” *Mathis v. United States*, 136 S. Ct. 2243, 2248 (2016); accord *Descamps v. United States*, 133 S. Ct. 2276, 2283 (2013). The prior conviction may operate as a predicate if it is defined more narrowly than, or has the same elements as, the generic federal crime. *Descamps* 133 S. Ct. at 2283. If, however, the prior offense “sweeps more broadly than the generic crime,” *id.*, then the prior offense cannot serve as a statutory predicate.

North Carolina Breaking or Entering is not arson or extortion and does not involve the use of explosives. Thus, it is a violent felony if and only if the elements match the elements of generic burglary. They do not because North Carolina criminalizes the breaking and entering into enclosures that are not ACCA “buildings.”

A. The question of what type of enclosures are ACCA “buildings” is currently unsettled after *United States v. Stitt*.

ACCA burglary is the “unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime.” *Taylor*, 495 U.S. 575,

598 (1990); *accord Mathis*, 136 S. Ct. at 2248. Generic burglary's 'building or other structure' element does not, however, encompass every enclosure. Generic burglary does not include, for example, burglary of a boat or motor vehicle, *Shepard v. United States*, 544 U.S. 13, 15-16 (2005), or a "land, water or air vehicle." *Mathis*, 136 S. Ct. at 2250. Nor does generic burglary encompass the breaking or entering of "any booth or tent, or any boat or vessel, or railroad car." *Taylor*, 495 U.S. at 599.

This Court recently began to clarify this meaning in *United States v. Stitt*, holding that burglary includes the breaking into "a structure or vehicle that has been adapted or is customarily used for overnight accommodation." 139 S. Ct. 399, 403 (2018). In so holding, this Court reaffirmed its prior precedents and indicated that each state's statute must be evaluated on its own merits. This Court reiterated its holding in *Taylor* that Missouri breaking and entering falls outside the Act because it includes breaking and entering into "any boat or vessel or railroad car" and thus includes "ordinary boats and vessels often at sea and railroad cars often filled with cargo, not people." *Id.* at 407. It also relied on its holding in *Mathis* that an Iowa statute including breaking into vehicles or similar structures used "for the storage or safekeeping of anything of value" was broader than generic burglary. *Id.*

But this Court also indicated that *Stitt* still left important questions unresolved. It vacated and remanded the sentence of one of the defendants in the *Stitt* case, Mr. Jason Sims, to explore his argument that Arkansas residential

burglary is overbroad because it covers burglary of a vehicle where a homeless person occasionally sleeps. *Id.* at 407-408.²

B. North Carolina Breaking or Entering includes enclosures that this Court has yet to address in the ACCA burglary context.

This petition presents this Court with the opportunity to resolve one of the questions remaining after *Stitt*: Whether “any other structure designed to house or secure within it any activity or property” is a building for ACCA burglary purposes. In North Carolina, someone commits the offense of breaking or entering when he “breaks or enters any building with intent to commit any felony or larceny therein.” N.C. Gen. Stat. § 14-54(a). The term “building” includes “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) (emphasis added).

North Carolina courts have applied this language to extend the Section 14-54(a) definition of building to include vehicles. The North Carolina courts hold that an unoccupied mobile home intended for retail sale and not affixed to the premises of the dealership qualifies as a “building” for purposes of the breaking or entering statute. *State v. Douglas*, 277 S.E.2d 467 (N.C. Ct. App. 1981). Similarly, an occupied “travel trailer” temporarily parked on a farm “satisf[ied] the occupied dwelling element of first degree burglary.” *State v. Taylor*, 428 S.E.2d 273, 274 (N.C. Ct. App. 1993).

² The Eighth Circuit affirmed Mr. Sims’s sentence on remand. *See United States v. Sims*, 933 F.3d 1009 (8th Cir. 2019).

Travel trailers and mobile homes are not ACCA buildings; they are vehicles under North Carolina law. *See, e.g.*, N.C. Gen. Stat. § 20-4.01(23) (defining “motor vehicle” as “[e]very vehicle . . . designed to run upon the highways which is pulled by a self-propelled vehicle”); N.C. Gen. Stat. § 20-4.01(32b) (defining “travel trailer” as a “recreational vehicle”); *King Homes, Inc. v. Bryson*, 159 S.E.2d 329, 332 (N.C. 1968) (“A mobile home is classified by statute as a motor vehicle.”); *In re Meade*, 174 B.R. 49, 51 (Bankr. M.D.N.C. 1994) (“It is clear under North Carolina law that a mobile home is [a] ‘motor vehicle’ for purposes of the statutes dealing with registration and ownership of motor vehicles.”). As the Supreme Court of North Carolina has explained, “[a] mobile home is designed to be operated upon the highways; and an owner who intends to so operate it is required to make application to the Department of Motor Vehicles for, and obtain, the registration thereof and issuance of a certificate of title for such vehicle.” *King Homes*, 159 S.E.2d at 332. *Accord Briggs v. Rankin*, 491 S.E.2d 234, 238 (N.C. Ct. App. 1997) (noting that the “title to a ‘mobile home’ or ‘trailer’ passes by transfer of a manufacturer’s certificate of origin and carries with it a normal motor vehicle title obtained from the N.C. Department of Motor Vehicles”).

Because the North Carolina courts interpret the breaking or entering statute to include the unlawful entry of vehicles such as travel trailers and mobile homes, this petition presents this Court with the opportunity to refine the meaning of “building” for ACCA purposes. This Court should take this opportunity to provide needed guidance to lower courts.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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