

APPENDIX A

United States v. Hall

United States Court of Appeals for the Sixth Circuit

December 19, 2019, Filed

No. 19-5531

Reporter

2019 U.S. App. LEXIS 37968 *

Cir. Tenn., Oct. 4, 2016)

UNITED STATES OF AMERICA,
Plaintiff-Appellee, v. ERIC HALL,
Defendant-Appellant.

Case Summary

Notice: NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. *SIXTH CIRCUIT RULE 28* LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE *RULE 28* BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

Overview

Where defendant pled guilty to being a felon in possession of a firearm and was sentenced to 180 months in prison, in part, by his classification as an armed career criminal under the Armed Career Criminal Act, due to two prior offenses for Tennessee aggravated burglary, he could not satisfy the fourth prong of plain-error analysis due to the overwhelming evidence showing that he knew he was a felon at the time of the change-of-plea hearing.

Prior History: [*1] ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE.

Outcome

Judgment affirmed.

United States v. Hall, 669 Fed. Appx. 297, 2016 U.S. App. LEXIS 18212 (6th Cir.) (6th

LexisNexis® Headnotes

Criminal Law &
 Procedure > ... > Sentencing
 Guidelines > Adjustments &
 Enhancements > Armed Career
 Criminals

Criminal Law &
 Procedure > ... > Appeals > Standards of
 Review > De Novo Review

[HN1](#) [↓] **Adjustments & Enhancements, Armed Career Criminals**

The court of appeals reviews de novo whether a defendant's prior conviction is an ACCA predicate offense. A defendant qualifies as an armed career criminal if he has three or more prior convictions for a serious drug offense or a violent felony, which is defined as one that has as an element the use, attempted use, or threatened use of physical force against the person of another (the use-of-force clause) or that is burglary, arson, or extortion, or involves use of explosives (the enumerated-offense clause). [18 U.S.C.S. § 924\(e\)\(2\)\(B\)](#). For a state burglary offense to qualify as a violent felony under the enumerated-offense clause, its elements must be the same as, or narrower than, those of generic burglary; i.e., an unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime.

Governments > Courts > Judicial
 Precedent

[HN2](#) [↓] **Courts, Judicial Precedent**

A published prior panel decision remains controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or the Court of Appeals sitting en banc overrules the prior decision.

Criminal Law &
 Procedure > Appeals > Reversible
 Error > Structural Errors

[HN3](#) [↓] **Reversible Error, Structural Errors**

Structural errors are few and far between. Constitutional errors are structural only in rare cases. An involuntary guilty plea does not amount to a structural constitutional defect.

Criminal Law &
 Procedure > ... > Standards of
 Review > Plain Error > Definition of
 Plain Error

[HN4](#) [↓] **Plain Error, Definition of Plain Error**

To show plain error, a defendant must show (1). To show plain error, a defendant must show (1) error (2) that was obvious or clear, (3) that affected defendant's substantial rights and (4) that affected the fairness, integrity, or public reputation of the judicial proceedings.

Counsel: For United States of America,

Plaintiff - Appellee: Karen Hartridge, Naya Bedini, Kevin G. Ritz, Assistant U.S. Attorney, Office of the U.S. Attorney, Memphis, TN.

For Eric Hall, Defendant - Appellant: David Michael Bell, Assistant Federal Public Defender, Federal Public Defender, Memphis, TN.

Judges: Before: GILMAN, GIBBONS, and THAPAR, Circuit Judges.

Opinion

ORDER

Eric Hall, a federal prisoner, appeals his conviction and 180-month prison sentence. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See Fed. R. App. P. 34(a)*.

In 2015, Hall pleaded guilty to being a felon in possession of a firearm, in violation of [18 U.S.C. § 922\(g\)\(1\)](#), and the district court sentenced him to 180 months in prison. Hall's sentence was driven in part by his classification as an armed career criminal under the [Armed Career Criminal Act \("ACCA"\)](#), which provides for a 180-month mandatory minimum sentence for any person convicted under [§ 922\(g\)](#) who has three prior convictions for a "violent felony." *See 18 U.S.C. § 924(e)*. Hall had

four prior convictions that the district court deemed to be ACCA predicate offenses: two for Tennessee aggravated burglary; [*2] one for Tennessee burglary of a building; and one for Tennessee robbery. Hall challenged his enhanced sentence on direct appeal and, on the agreement of the parties, we vacated Hall's sentence and remanded to the district court for reconsideration in light of [Mathis v. United States, 136 S. Ct. 2243, 195 L. Ed. 2d 604 \(2016\)](#). [United States v. Hall, 669 F. App'x 297, 298 \(6th Cir. 2016\)](#) (per curiam). We also instructed the district court to hold Hall's case in abeyance pending the outcome of [United States v. Stitt, 860 F.3d 854 \(6th Cir. 2017\)](#) (en banc) ("*Stitt I*"), in which this circuit's en banc court considered whether circuit precedent correctly classified Tennessee aggravated burglary as a generic violent felony for ACCA purposes. [Hall, 669 F. App'x at 298](#).

In June 2017, we decided *Stitt I*, holding that a conviction under Tennessee's aggravated-burglary statute does not qualify as an ACCA predicate offense because the statute is broader than the definition of generic burglary. [860 F.3d at 857](#). Before the district court set Hall's resentencing hearing, however, the government petitioned for and received a writ of certiorari from the Supreme Court to consider *Stitt I*. The Supreme Court ultimately reversed our decision, holding that Tennessee's aggravated-burglary statute was not rendered overly broad by its coverage of mobile structures "designed or adapted for overnight use." *United States v. Stitt, 139 S. Ct. 399, 407, 202 L. Ed. 2d 364*

(2018) ("*Stitt II*").

The [*3] district court subsequently set Hall's resentencing hearing, at which Hall advanced a novel argument as to why his prior burglary and aggravated-burglary convictions do not qualify as ACCA predicate offenses; namely, that the "entry" element of Tennessee's burglary statute is broader than the "entry" element of generic burglary. The district court concluded that Hall's argument was foreclosed by binding precedent and resentenced Hall to 180 months of imprisonment.

On appeal, Hall argues that his Tennessee burglary and aggravated-burglary convictions still should not count as ACCA predicates because the entry element of Tennessee's burglary statutes has been defined by the Tennessee courts more broadly than the entry element of generic burglary. He also argues that his conviction must be vacated in light of [*Rehaif v. United States*, 139 S. Ct. 2191, 204 L. Ed. 2d 594 \(2019\)](#).

HNI[↑] We review de novo whether a defendant's prior conviction is an ACCA predicate offense. [*United States v. Mitchell*, 743 F.3d 1054, 1058 \(6th Cir. 2014\)](#). A defendant qualifies as an armed career criminal if he has three or more prior convictions for a serious drug offense or a violent felony, which is defined as one that "has as an element the use, attempted use, or threatened use of physical force against the person of another" (the use-of-force [*4] clause) or that "is burglary, arson, or extortion, [or] involves use of explosives" (the enumerated-offense clause). [*18 U.S.C.*](#)

[*§ 924\(e\)\(2\)\(B\)*](#); see [*Johnson v. United States*, 135 S. Ct. 2551, 2563, 192 L. Ed. 2d 569 \(2015\)](#) (invalidating this provision's third clause, known as the residual clause, as unconstitutionally vague). For a state burglary offense to qualify as a violent felony under the enumerated-offense clause, its elements must be the same as, or narrower than, those of generic burglary; i.e., "an unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime." [*Taylor v. United States*, 495 U.S. 575, 598, 110 S. Ct. 2143, 109 L. Ed. 2d 607 \(1990\)](#); see [*Mathis*, 136 S. Ct. at 2248](#).

Prior to *Stitt I*, we had held that Tennessee's aggravated-burglary statute, which criminalizes the "burglary of a habitation," [*Tenn. Code Ann. § 39-14-403*](#), comported with the definition of generic burglary and thus constituted a violent felony for purposes of the ACCA. [*United States v. Nance*, 481 F.3d 882, 888 \(6th Cir. 2007\)](#); see [*United States v. Priddy*, 808 F.3d 676, 684 \(6th Cir. 2015\)](#). In *Stitt I*, 860 F.3d at 860-61, we overruled *Nance* and held that Tennessee's aggravated-burglary statute swept more broadly than generic burglary because it defined "habitation" to include nonpermanent structures such as trailers and tents that are adapted or used for overnight accommodation. But the Supreme Court recently reversed that decision, concluding that the inclusion of such structures does not render the statute overly broad. [*5] *Stitt II*, 139 S. Ct. at 407.

Hall does not dispute that he is no longer entitled to relief based on *Stitt I*, but argues that the district court's judgment should be

vacated on the alternative ground that the Tennessee courts have defined the "entry" element of the state's burglary statutes more broadly than generic burglary by including intrusions by instrument that are the functional equivalent of attempted burglary. According to Hall, *Stitt II* and *Nance* do not foreclose the court from reaching that conclusion because those cases simply assumed, without deciding, that the entry element was sufficiently narrow. But as the government argues—and we recently held—*Nance* "is once again the law of this circuit." [*Brumbach v. United States*, 929 F.3d 791, 794 \(6th Cir. 2019\)](#). Accordingly, even if there were merit to Hall's new argument, a panel of this court cannot overrule *Nance*'s holding that a Tennessee conviction for aggravated burglary is a violent felony for purposes of the ACCA. See [*id.* at 795](#) (declining to consider the same argument in light of *Nance*); [*United States v. Elbe*, 774 F.3d 885, 891 \(6th Cir. 2014\)](#) ([HN2](#)^[↑]) "[A] published prior panel decision 'remains controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or this Court sitting en banc overrules the prior decision.'" [*6] (quoting [*Salmi v. Sec'y of Health & Human Servs.*, 774 F.2d 685, 689 \(6th Cir. 1985\)](#))).

Finally, after Hall filed his merit brief, the Supreme Court decided *Rehaif*, holding that to convict a defendant under [§ 922\(g\)](#), "the [g]overnment must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm." [139 S. Ct. at 2200](#). On Hall's

motion, we ordered the parties to submit supplemental briefs about the effect, if any, *Rehaif* had on this case.

Hall argues that his guilty plea must be vacated based on *Rehaif*. He claims that his guilty plea was constitutionally involuntary because he did not know of the scienter-of-status element when he pled guilty. See [*Bradshaw v. Stumpf*, 545 U.S. 175, 183, 125 S. Ct. 2398, 162 L. Ed. 2d 143 \(2005\)](#); [*In re Hanserd*, 123 F.3d 922, 926 \(6th Cir. 1997\)](#). Hall asks the court to reverse his conviction without any showing of prejudice because he argues that constitutional error was structural. [HN3](#)^[↑] But structural errors are few and far between. See [*Washington v. Recuenco*, 548 U.S. 212, 218, 126 S. Ct. 2546, 165 L. Ed. 2d 466 \(2006\)](#) (cautioning that constitutional errors are structural "[o]nly in rare cases"). And this court has already held that an involuntary guilty plea does not amount to a structural constitutional defect. [*Ruelas v. Wolfenbarger*, 580 F.3d 403, 410-11 \(6th Cir. 2009\)](#).

So to the extent that Hall challenges his guilty plea based on *Rehaif*, we apply the plain-error standard of review. See [*United States v. Vonn*, 535 U.S. 55, 58-59, 122 S. Ct. 1043, 152 L. Ed. 2d 90 \(2002\)](#); see also [*United States v. Balde*, 943 F.3d 73, 92 \(2d Cir. 2019\)](#) (collecting cases that have [[*7](#)] applied plain-error review to newly raised *Rehaif* claims). [HN4](#)^[↑] To show plain error, a defendant must show (1) error (2) that was obvious or clear, (3) that affected defendant's substantial rights and (4) that affected the fairness, integrity, or public reputation of the judicial proceedings."

United States v. Wallace, 597 F.3d 794, 802 (6th Cir. 2010).

Even assuming that the district court committed a clear error that affected Hall's substantial rights, he cannot show that failing to correct the error would seriously affect the fairness, integrity, or public reputation of judicial proceedings. *See Puckett v. United States*, 556 U.S. 129, 135, 129 S. Ct. 1423, 173 L. Ed. 2d 266 (2009). Based on the undisputed facts in the presentence report, Hall had been convicted of multiple felonies in Tennessee state court when he possessed the firearm in this case. Six of those felonies involved prison sentences exceeding a year. Given the overwhelming evidence showing that Hall knew he was a felon at the time of the change-of-plea hearing in this case, Hall cannot satisfy the fourth prong of plain-error analysis. *See, e.g., United States v. Cotton*, 535 U.S. 625, 633, 122 S. Ct. 1781, 152 L. Ed. 2d 860 (2002); *Johnson v. United States*, 520 U.S. 461, 469-70, 117 S. Ct. 1544, 137 L. Ed. 2d 718 (1997).

Next. Hall argues that we must vacate his conviction in light of *Rehaif* because his indictment does "not contain the element of the defendant's knowledge of his status as a convicted felon Consequently, there [*8] was no federal crime charged." We review Hall's sufficiency-of-the-indictment claim under the plain-error standard. *United States v. Simpson*, 546 F.3d 394, 398 (6th Cir. 2008). This challenge fails for the same reason as the challenge to his guilty plea: he cannot show that any error that might have occurred seriously affected the fairness, integrity, or

public reputation of his criminal proceedings. *See, e.g., United States v. Reed*, 941 F.3d 1018, 1022 (11th Cir. 2019).

Accordingly, we **AFFIRM** the district court's judgment.

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