Eleventh Circuit's decision below

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11092
Non-Argument Calendar

D.C. Docket No. 3:18-cr-00226-MMH-MCR-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TIMOTHY TIJWAN DOCTOR,

Defendant-Appellant.

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

(December 28, 2020)

Before NEWSOM, LUCK, and ANDERSON, Circuit Judges.

PER CURIAM:

Timothy Doctor appeals his fifteen-year sentence for possessing a firearm after being convicted of a felony, in violation of 18 U.S.C. section 922(g)(1). He argues that the district court erred in sentencing him under the Armed Career Criminal Act because two of his prior felony drug convictions—which were contained in the same charging document but occurred on different days—were not "committed on occasions different from one another." We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A grand jury indicted Doctor on one count of possessing a firearm after being convicted of a felony. He pleaded guilty without a plea agreement. The probation officer determined in the presentence investigation report that Doctor was an armed career criminal because of three prior state drug convictions. One conviction was for sale or delivery of cocaine on July 6, 2006; the second was for sale or delivery of cocaine on July 12, 2006; and the third was for sale, manufacture, or delivery of cocaine within 1,000 feet of a church in 2012.

Doctor objected that he was not an armed career criminal because his 2006 convictions were not committed on different occasions as required by the Armed Career Criminal Act. This was because they were contained in the same charging document, which was only allowed under Florida law, Doctor argued, if the offenses

are "based on the same transaction or are connected acts or transactions." He argued that the district court could not look at the state charging document to determine the dates of the offenses because, under Florida law, the dates alleged in the charging document were not elements. Doctor conceded that this argument had been rejected by United States v. Longoria, 874 F.3d 1278, 1281 (11th Cir. 2017).

At sentencing, the district court admitted into evidence the charging documents for Doctor's prior drug convictions. Doctor objected again that his 2006 convictions were not different occurrences under the Armed Career Criminal Act but acknowledged that his position was contrary to "binding" precedent. The district court overruled his objection.

The district court calculated Doctor's advisory guideline range at 135 to 168 months in prison, which became 180 months because of the minimum mandatory sentence required by the Armed Career Criminal Act. See U.S.S.G. § 5G1.1(b). The district court sentenced Doctor to 180 months in prison followed by five years of supervised release. Doctor now appeals his sentence.

STANDARD OF REVIEW

We review de novo the district court's conclusion that prior offenses meet the Act's "different-occasions requirement." Longoria, 874 F.3d at 1281.

DISCUSSION

Doctor argues that his 2006 convictions did not occur on different occasions because they were contained in the same charging document, and therefore, they were not two separate prior serious drug offense convictions for purposes of the Armed Career Criminal Act.

A defendant convicted of being a felon in possession of a firearm is subject to a fifteen-year mandatory minimum sentence as an armed career criminal if he has three prior convictions for a serious drug offense "committed on occasions different from one another." 18 U.S.C. § 924(e)(1). For offenses to have occurred on different occasions, they need not be charged in separate indictments. United States v. Sneed, 600 F.3d 1326, 1329–30 (11th Cir. 2010). Rather, the convictions must be from "separate and distinct criminal episode[s] and for crimes that are temporally distinct." Longoria, 874 F.3d at 1281 (quotation marks omitted). "[S]o long as predicate crimes are successive rather than simultaneous, they constitute separate criminal episodes" for purposes of the enhancement. Id. (quotation marks omitted).

Here, the district court was allowed to examine the state charging document to determine whether Doctor's 2006 offenses were separate prior convictions. Longoria, 874 F.3d at 1281 ("To determine the nature of a prior conviction, a court 'is generally limited to examining the statutory definition [of the offense of the prior conviction], charging document, written plea agreement, transcript of plea colloquy,

and any explicit factual finding by the trial judge to which the defendant assented.'" (quoting Shepard v. United States, 544 U.S. 13, 16 (2005)). The charging document showed that Doctor's 2006 convictions occurred six days apart from each other. Because Doctor's offenses didn't happen simultaneously but were instead distinct crimes separated by almost a week, the district court correctly concluded that they satisfied the Armed Career Criminal Act's "different occasions" requirement. See id. at 1283 (holding that the defendant's prior convictions were temporarily distinct where they "occurred at clear and obvious points in time separated by nine days").

Doctor's efforts to distinguish Longoria fail. He first argues that under Florida law, two or more offenses can only be charged in the same charging document if they "are based on the same act or transaction or on two or more connected acts or transactions." See Fla. R. Crim. P. 3.150(a). Thus, Doctor argues, joinder of his 2006 crimes in the same charging document established that "the offenses were part of the same criminal episode." But federal law—not state criminal procedure—controls when determining whether separate convictions satisfy the "different occasions" requirement. See United States v. Braun, 801 F.3d 1301, 1303 (11th Cir. 2015) ("We are bound by federal law when we interpret terms in the [Armed Career Criminal Act]"). The controlling law here is Longoria, which allowed the district court to rely on the dates in the state charging document to decide whether Doctor's prior crimes were "successive rather than simultaneous." 874 F.3d at 1281.

Doctor next argues that a court can only look to the elements—and not the facts—of a prior offense in analyzing whether it's a valid prior conviction. See Mathis v. United States, 136 S. Ct. 2243, 2252–56 (2016); Descamps v. United States, 570 U.S. 254, 262–64 (2013). He maintains that the dates of the offenses alleged in the charging document were not elements under Florida law, prohibiting the district court from using it to determine this "non-elemental fact." We rejected this argument in Longoria. See 874 F.3d at 1283 (rejecting claim that the district court "should not have looked at 'non-elemental facts,' the dates of his prior convictions, in Shepard-approved documents when deciding whether his predicate offenses were committed on different occasions"); see also United States v. Weeks, 711 F.3d 1255 (11th Cir. 2013) (holding that a district court may determine the factual nature of prior convictions, "including whether they were committed on different occasions, so long as they limit themselves to Shepard-approved documents").

Finally, Doctor argues that we should not follow Longoria because it conflicts with Descamps and Mathis. But under our prior panel precedent rule, we are bound to follow Longoria until the Supreme Court or the en banc court tells us otherwise. See, e.g., Sneed, 600 F.3d at 1332 ("[A] prior panel's holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting en banc."). Longoria could

not have been overruled or abrogated by Descamps and Mathis because it was decided after these Supreme Court cases. See Smith v. GTE Corp., 236 F.3d 1292, 1303 (11th Cir. 2001) ("[W]e categorically reject any exception to the prior panel precedent rule based upon a perceived defect in the prior panel's reasoning or analysis as it relates to the law in existence at that time.").

In any event, Descamps and Mathis decided different issues. They held that a district court may not use Shepard documents in determining whether a prior conviction qualifies as a violent felony where that conviction was for violating an indivisible statute with a single set of nondisjunctive elements. See Descamps, 570 U.S. at 260; Mathis, 136 S. Ct. at 2253–54. Neither case was about whether prior convictions occurred on different occasions for purposes of the Armed Career Criminal Act. Thus, they do not overrule or abrogate Longoria. See, e.g., Garrett v. Univ. of Ala. Birmingham Bd. of Trs., 344 F.3d 1288, 1292 (11th Cir. 2003) ("While an intervening decision of the Supreme Court can overrule the decision of a prior panel of our court, the Supreme Court decision must be clearly on point.").

In sum, Longoria is binding precedent, as Doctor conceded at sentencing, and required the district court to impose a fifteen-year minimum mandatory sentence. We find no error and therefore no basis to disturb his sentence.

AFFIRMED.

District Court's sentencing decision

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CASE NO: 3:18-cr-226-J-34MCR

UNITED STATES OF AMERICA

-vs-

TIMOTHY TIJWAN DOCTOR,

Defendant.

Jacksonville, Florida

Date: March 16, 2020

Time: 9:35 a.m.

Courtroom: 10B

SENTENCING
BEFORE THE HONORABLE MARCIA MORALES HOWARD
UNITED STATES DISTRICT JUDGE

OFFICIAL COURT REPORTER:

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(Proceedings reported by stenography; transcript produced by computer.)

THE COURT: You didn't have any questions?

THE DEFENDANT: No, ma'am.

THE COURT: Okay. Mr. Korody, did you have sufficient opportunity to review the PSR with this gentleman?

MR. KORODY: Yes, Your Honor.

THE COURT: Does he have any outstanding objections to the factual statements or the guideline calculation?

MR. KORODY: Yes, Your Honor. And those were articulated in my sentencing memoranda. There are two outstanding objections.

One relates to whether or not he has the three predicate offenses to qualify him as an armed career criminal for the enhancement.

The second is we maintain our objection that the firearm was used in connection with another offense.

And, Your Honor, it's our position that Mr. Doctor did not use that firearm in connection with another offense, so that would be a difference of one point in his guidelines.

THE COURT: Okay. Mr. Korody did file on behalf of Mr. Doctor a sentencing memorandum. It is Document No. 39 in which he makes those objections and to which he also appends a number of letters, some school records, and a report from the psychologist -- I can't remember the name -- from Bloomfield Psychological Services, and I have reviewed that as well as the presentence report.

Mr. Talbot, are you prepared to respond to the objections that are set forth in the sentencing memorandum?

MR. TALBOT: I am, Your Honor.

THE COURT: All right. Let me hear from you.

MR. TALBOT: Good morning, Your Honor. And I have tendered to the clerk two exhibits that I would offer into -- into the record for purposes of the sentencing.

They are the certified copies of the information and then corresponding conviction for what will be three different sale or delivery of cocaine convictions that Mr. Doctor has.

And so if I could introduce those to establish his qualification as an armed career criminal.

THE COURT: I'm sorry?

MR. TALBOT: I know that the objection is that they --

THE COURT: Didn't occur on different occasions.

MR. TALBOT: Didn't occur -- right, they're in the same conviction. They didn't occur on different occasions.

The information which would be the relevant *Shepard* document, which it will be Exhibit 2 to the sentencing, shows that Count One occurred on July 6th, and Count Two occurred on July 12th.

So according to binding Eleventh Circuit precedent, that would qualify as two separate convictions even though they are contained in the same information.

THE COURT: Mr. Korody, retaining your objection to the guideline or to the -- to whether the convictions occurred on occasions separate from one another, any objection to the admission of Government's Exhibit 1 and 2?

MR. KORODY: No, Your Honor.

THE COURT: All right. So Government's 1 and 2 are admitted.

(Government's Exhibits 1 and 2 were admitted in evidence.)

THE COURT: And Government's Exhibit 1 shows that is a -- includes the information -- I think it's an information -- yes, charging Mr. Doctor with a sale and delivery of cocaine on July 6th, 2006, in Count One; and a sale or delivery of cocaine on July 12th, 2006, both in violation of Florida Statutes Section 893.13(1)(a)1.

And there -- and then along with the information is the conviction -- the judgment of conviction as to those two offenses based upon an adjudication of guilt.

And Exhibit 2 is the charge for a sale or delivery of cocaine within 1000 feet of a place of worship, in violation of 893.13(1)(e)1, and it includes the judgment of conviction based upon an adjudication of guilt for that offense.

And, Mr. Korody, I think, if I understand it, you're objecting to the determination that the August 6th and the -- I'm sorry, the July 6th and the July 12th convictions were for offenses committed on occasions separate from one another, but

you acknowledge that under binding Eleventh Circuit precedent that would be the Court's conclusion; is that right?

MR. KORODY: Yes, Your Honor.

THE COURT: All right. So on that basis, I am going to -- having received in evidence the Government's exhibits, and given that the Court is permitted to consider the judgment -- the charging documents and the judgments, will overrule the objection.

Go ahead, Mr. Talbot, as to the second objection.

MR. TALBOT: As to the second objection, we do believe that probation has accurately scored this matter; however, we are not going to bring witnesses forward to try and establish the -- the aggravated assault charge.

And because of that, if the Court then lowers him down to 33, he'll be a 33-4, I believe.

At the end of the day, regardless of where the guidelines are, we are going to recommend a sentence of 15 years in prison for Mr. Doctor.

So, as I -- as I said, I don't -- I don't disagree that probation has scored it correctly, but we -- we will not be able to effectively back that up with witness testimony.

THE COURT: All right. Then let me ask you-all to look at paragraph 7, because in addition to -- if there's not going to be any evidence presented that -- I mean, Mr. Doctor is objecting to -- to the fact which supports that calculation,

whatsoever towards the police officer. So that mitigates the charge before this Court.

His criminal history, no violent offenses. This is a guy that is on the street in low-level crime. And I think I pointed out in my sentencing memoranda -- I know I did -- that one of the predicate offenses here that is resulting in the 15-year mandatory minimum is a $40 hand-to-hand drug transaction with an undercover police officer.

So, Your Honor, the guidelines are what the guidelines are, and so I'd ask this Court for the minimum guidelines. Thank you.

THE COURT: Thank you, Mr. Korody.

Mr. Talbot, anything further on behalf of the United States?

MR. TALBOT: No, Your Honor.

THE COURT: Mr. Doctor is before the Court having pled guilty to the charge of possession of a firearm by a convicted felon in violation of Title 18, United States Code, Section 922(g)(1).

The penalty for that offense are set forth in 18 United States Code, Section 924, and the penalty applicable to Mr. Doctor is found in Section 924(e), which provides that in the case of a person who violates Section 922(g), and has three previous convictions for a violent felony or a serious drug offense committed on occasions separate from one another --

different from one another, is the actual language -- such person shall be fined under this title and imprisoned not less than 15 years.

And, Mr. Doctor, as I said, is convicted of a violation under Section 922(g), and, as represented in Government's Exhibits 1 and 2, has three prior convictions for serious drug offenses.

And because he has been -- because he's pled guilty to that offense and because he does have three prior convictions for serious drug offenses committed on occasions different from one another, the minimum mandatory sentence that must be imposed is a sentence of 15 years.

The maximum sentence is life. But in the Court's view, the minimum mandatory -- well, the Court is of the view that no more than the minimum mandatory is warranted, but is constrained and must impose the minimum mandatory sentence that Section 924(e) dictates, and so that is the Court's intention at this time.

Mr. Korody, if you'll come up to the podium with Mr. Doctor.

The Court has asked why judgment should not be pronounced and has been given -- no, I didn't.

Any bar to sentencing, Mr. Korody?

MR. KORODY: No, Your Honor.

THE COURT: Mr. Talbot?

MR. TALBOT: No, Your Honor.

THE COURT: Now the Court has asked why judgment should not be pronounced and has been given no cause.

I've heard from counsel, I've heard from Mr. Doctor, I've heard from family, and I've also reviewed the letters, the educational records, and the psychological assessment.

Pursuant to Title 18, United States Code, Sections 3551 and 3553, it is the judgment of the Court that Mr. Doctor -- Timothy Tijwan Doctor, is hereby committed to the custody of the Bureau of Prisons for a term of 180 months. That is the minimum mandatory sentence that is required by 18 United States Code, Section 924(e).

Upon release from imprisonment, Mr. Doctor, you'll have a term of supervised release of five years. And during that term you'll have to comply with the standard conditions of release adopted in the Middle District of Florida as well as some special conditions.

You'll be ordered to participate in a substance abuse treatment program and submit to random drug testing.

You will also have to participate in a mental health treatment program.

Because there was a firearm involved in the offense, you'll have to submit to a search of your person, your residence, your place of business, any vehicles or storage units that you have. And if you share any of those items with