APPENDIX A

United States v. Thomas

United States Court of Appeals for the Sixth Circuit

August 08, 2023, Filed

No. 22-6067

Reporter

2023 U.S. App. LEXIS 20577 *

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. DEANGELUS THOMAS, Defendant-Appellant.

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Opinion

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

O R D E R

Before: COLE, McKEAGUE, and NALBANDIAN, Circuit Judges.

Deangelus Thomas, a federal prisoner proceeding through counsel, appeals his 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).* Because Thomas's argument is foreclosed by circuit

precedent, we affirm.

Thomas was convicted of being a felon in possession of a firearm and ammunition, in

violation of *18 U.S.C. § 922(g)(1)*. The presentence report classified Thomas as an armed career

criminal under the *Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e),* because he had three

prior violent felony convictions. Thomas objected to the ACCA enhancement, first arguing that

one of his prior convictions, attempted second-degree murder in Tennessee, no longer qualifies as

a violent felony after the Supreme Court's decision in *United States v. Taylor, 142 S. Ct. 2015*

(2022). After the Supreme Court's decision in *Wooden v. United States, 142 S. Ct. 1063*

(2022),

Thomas filed a supplemental objection. He argued that, under *Wooden*, the district court would

violate Thomas's Fifth and Sixth Amendment rights if it performed judicial factfinding to

determine whether Thomas's prior violent felony convictions occurred on different occasions. The

Case: **22-6067** Document: 16 Filed: 08/08/2023 [*2] Page: 1

No. **22-6067**

- 2 -

government responded, arguing that attempted second-degree murder is a "violent felony" under

the ACCA. Regarding Thomas's supplemental objection, the government conceded that "in light

of the 'multi-factored' inquiry required by *Wooden*, . . . the ACCA enhancement should not be

applied in the absence of a jury finding (or admission by the defendant) on the occasions-different

issue." The government subsequently requested that a jury be commissioned to make the finding.

The district court overruled Thomas's objection and denied the government's request, concluding

that, under Sixth Circuit precedent, a sentencing judge may answer the question of whether

predicate offenses were committed on different occasions. After the district court found that the

ACCA enhancement applied to Thomas, it sentenced him to 432 months imprisonment. Thomas

appeals.

The ACCA imposes a mandatory minimum of fifteen years of imprisonment on any

"person who violates section 922(g) of this title and has three previous convictions . . . for a violent

felony or a serious drug offense, or both, committed on occasions different from one another[.]"

18 U.S.C. § 924(e)(1). "This requires two separate inquires: (1) whether prior convictions qualify [*3]

as ACCA-predicates, and (2) whether such offenses were committed on different occasions."

United States v. Hennessee, 932 F.3d 437, 441 (6th Cir. 2019). We review de novo the district

court's determination that Thomas committed his prior offenses on separate occasions. *United*

States v. Southers, 866 F.3d 364, 369 (6th Cir. 2017).

Thomas argues that the district court

violated his Fifth and Sixth Amendment rights by

finding that his offenses occurred on different occasions. We have consistently rejected this

argument. "[T]his court has already held that 'consistent with *Apprendi* [*v. New Jersey*, 530 U.S.

466 (2000)], a sentencing judge may answer the question of whether prior offenses were

'committed on occasions different from one another.'" *United States v. Williams, 39 F.4th 342,*

351 (6th Cir. 2022) (second alteration in original) (quoting *United States v. King, 853 F.3d 267,*

274 (6th Cir. 2017)); *see also Hennessee, 932 F.3d at 444*; *United States v. Burgin, 388 F.3d 177,*

186 (6th Cir. 2004).

Thomas acknowledges this precedent but contends that these cases overlook several more

recent Supreme Court cases addressing judicial fact finding, *United States v. Hayes, 555 U.S. 415*

Case: **22-6067** Document: 16 Filed: 08/08/2023 Page: 2

No. **22-6067**

- 3 -

(2009), and *Nijhawan v. Holder, 557 U.S. 29 (2009)*. Thomas argues that the Supreme

Court's

analysis in both *Hayes* and *Nijhawan* shows that the court must treat the occasions-different

inquiry as an element that must be found by the jury. "Neither case, however, involved the ACCA

or the different-occasions requirement" [*4] and the cases thus "give us no authority to revisit our

binding precedent." *United States v. Cook, No. 22-5056, 2022 WL 4684595, at *2 (6th Cir. Oct. 3,*

2022) *cert. denied, 143 S. Ct.1095 (2023)*. The Court's recent decision in *Wooden* also does not

change this conclusion. *Wooden* addressed whether a string of burglaries committed at a single

storage facility occurred on "different occasions." *142 S. Ct. at 1067*. Wooden did not make a

constitutional challenge to his sentence, "[s]o *Wooden* didn't disrupt our prior caselaw." *Cook,*

*2022 WL 4684595, at *2*.

In the absence of a Supreme Court decision or an en banc ruling of this court holding

otherwise, we are bound by our precedent that a sentencing judge may decide whether predicate

offenses were committed on different

occasions for ACCA purposes. *See id.*; *United States v.*

Ferguson, 868 F.3d 514, 515 (6th Cir. 2017). The district court did not err in enhancing Thomas's

sentence under the ACCA.

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

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

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Case: **22-6067** Document: 16 Filed: 08/08/2023 Page: 3

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