

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

JEREMY DALE ROBINSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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43 F.4th 892

United States Court of Appeals, Eighth Circuit.

UNITED STATES of America, Plaintiff - Appellee

v.

Jeremy Dale ROBINSON, Defendant - Appellant

No. 21-2396

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Submitted: April 15, 2022

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Filed: August 9, 2022

Synopsis

Background: Defendant was convicted in the United States District Court for the Western District of Arkansas, P. K. Holmes, III, J., of possessing a firearm as a felon, and was sentenced to an enhanced sentence as an armed career criminal. Defendant appealed.

Holdings: The Court of Appeals, [Grasz](#), Circuit Judge, held that:

[1] defendant's three residential burglary convictions were separate and distinct criminal episodes, and thus defendant was subject to enhanced sentence under Armed Career Criminal Act (ACCA), and

[2] Sixth Amendment does not require that sentence enhancement under ACCA be charged in indictment or decided by jury.

Affirmed.

Procedural Posture(s): Appellate Review; Sentencing or Penalty Phase Motion or Objection.

West Headnotes (8)

[1] **Criminal Law** 🔑 Review De Novo

Court of Appeals reviews de novo whether prior conviction qualifies as predicate offense under Armed Career Criminal Act (ACCA), which requires imposition of an enhanced sentence

when a defendant was convicted of certain predicate offenses.  18 U.S.C.A. § 924(e)(1).

1 Case that cites this headnote

[2] **Sentencing and Punishment** 🔑 Convictions counted as separate

For prior convictions to qualify as predicate offenses committed on occasions different from one another under the Armed Career Criminal Act (ACCA), each conviction must be a separate and distinct criminal episode, rather than part of a continuous course of conduct.  18 U.S.C.A. § 924(e)(1).

1 Case that cites this headnote

[3] **Sentencing and Punishment** 🔑 Convictions counted as separate

In determining whether prior convictions are separate and distinct, as part of determination of number of predicate offenses under Armed Career Criminal Act (ACCA), at least three factors are relevant: (1) the time lapse between offenses, (2) the physical distance between their occurrence, and (3) their lack of overall substantive continuity, a factor that is often demonstrated in the violent-felony context by different victims or different aggressions.  18 U.S.C.A. § 924(e)(1).

[4] **Sentencing and Punishment** 🔑 Convictions counted as separate

Defendant's three prior convictions for residential burglaries, committed on different days, in different locations, and against different victims over a three-week span, were separate and distinct criminal episodes, such that defendant was subject to an enhanced sentence under the Armed Career Criminal Act (ACCA) following his guilty plea to possessing a firearm as a felon, even though defendant was arrested on same date for two of his qualifying burglary convictions and sentenced on same date for

all three. 18 U.S.C.A. §§ 922(g), 924(c), 924(e)(1).

[5] **Sentencing and Punishment** **Convictions counted as separate**

Violent felonies committed at different times, different locations, or against different victims may qualify as separate qualifying convictions under the Armed Career Criminal Act (ACCA), even if the offenses were committed within a short period of time of each other. 18 U.S.C.A. § 924(e)(1).

1 Case that cites this headnote

[6] **Sentencing and Punishment** **Convictions counted as separate**

The sentence enhancement under the Armed Career Criminal Act (ACCA) does not require the predicate felonies be separated by arrest or conviction, but rather that the offenses be committed on occasions different from one another. 18 U.S.C.A. § 924(e)(1).

2 Cases that cite this headnote

[7] **Jury** **Practice and Procedure in Criminal Cases**

Jury **Sentencing Matters**

Sentencing and Punishment **Necessity of special allegations or charges**

Sixth Amendment does not require that sentence enhancement under Armed Criminal Career Act (ACCA) be charged in indictment, nor does it require that jury determine whether defendant is subject to sentence enhancement ACCA; rather, decision as to whether defendant is subject to sentence enhancement under ACCA is in province of district judge at sentencing. U.S. Const. Amend. 6; 18 U.S.C.A. § 924(e)(1).

1 Case that cites this headnote

[8] **Jury** **Sentencing Matters**

Sentencing and Punishment **Use and effect of report**

In determining specific dates on which prior offense occurred for Armed Career Criminal Act (ACCA) sentence enhancement, sentencing court does not violate Sixth Amendment when it considers information outlining underlying facts of offense, such as those outlined in presentence investigation report, in addition to elements of offenses of conviction. U.S. Const. Amend. 6; 18 U.S.C.A. § 924(e)(1).

2 Cases that cite this headnote

***894** Appeal from United States District Court for the Western District of Arkansas

Attorneys and Law Firms

Anna M. Williams, Asst. Fed. Public Defender, Fayetteville, AR (**Bruce D. Eddy**, Fed. Public Defender, on the brief), for defendant-appellant.

Lloyd V. Stone, Asst. U.S. Atty., Fort Smith, AR (David Clay Fowlkes, Acting U.S. Atty., on the brief), for plaintiff-appellee.

Before **SMITH**, Chief Judge, **WOLLMAN** and **GRASZ**, Circuit Judges.

Opinion

GRASZ, Circuit Judge.

Jeremy Dale Robinson pled guilty to unlawfully possessing a firearm as a felon. He appeals the district court's ¹ conclusion that his prior Arkansas burglary convictions were separate offenses, rendering him an armed career criminal subject to an enhanced sentence. We affirm the judgment of the district court.

I. Background

Robinson pled guilty to unlawfully possessing a firearm as a felon in violation of 18 U.S.C. §§ 922(g), 924(c) and (e). Following Robinson's guilty plea, the district court

concluded Robinson had at least three residential burglary convictions that constituted violent felony convictions under the Armed Career Criminal Act (“ACCA”). *See Ark. Code. Ann.* § 5-39-201; 18 U.S.C. § 924(e)(1). The district court accordingly concluded Robinson was an armed career criminal and imposed the mandatory minimum 15-year term of imprisonment. *See* 18 U.S.C. § 924(e)(1).

Robinson committed the first qualifying burglary on June 14, 2011. In that offense, Robinson broke into the victim's home, stole the victim's revolver and some other items, and, when confronted by the victim, Robinson pointed the revolver at him before fleeing. Robinson committed the second burglary fifteen days later on June 29, 2011. In that offense, Robinson broke into the victim's home by kicking open her door and then stole several items. Robinson committed the third burglary on July 5, 2011. In that offense, after the victim caught Robinson and an accomplice in the act of burglarizing her home, Robinson or the accomplice grabbed the victim's purse off her arm and fled with some of the victim's property. Robinson committed each of these burglaries against separate victims in separate homes and stole different kinds of property. Robinson was arrested on the same date for the first two burglaries, and then arrested on a different date for the third burglary. On May 25, 2012, Robinson was convicted of each burglary and sentenced in state court to three terms of ten years of imprisonment, to run concurrently.

II. Analysis

[1] On appeal, Robinson contends his first two Arkansas burglary convictions are not separate predicate felonies under the ACCA because they occurred during a single criminal episode. “We review *de novo* whether a prior conviction qualifies as a predicate offense” under the ACCA. *895 *United States v. Mattox*, 27 F.4th 668, 677 (8th Cir. 2022).

[2] [3] The ACCA mandates a 15-year minimum sentence for a defendant who has been convicted of unlawfully possessing a firearm as a felon following “three previous convictions by any court ... for a violent felony ... *committed on occasions different from one another*.” 18 U.S.C. § 924(e)(1) (emphasis added). For prior convictions to qualify as predicate offenses committed on occasions different from one another under the ACCA, “each conviction must be a separate and distinct criminal episode, rather than part of a

continuous course of conduct.” *United States v. Humphrey*, 759 F.3d 909, 911 (8th Cir. 2014) (quoting *United States v. Deroo*, 304 F.3d 824, 828 (8th Cir. 2002)). In determining whether prior convictions are separate and distinct, at least three factors are relevant: “(1) the time lapse between offenses, (2) the physical distance between their occurrence, and (3) their lack of overall substantive continuity, a factor that is often demonstrated in the violent-felony context by different victims or different aggressions.” *United States v. Pledge*, 821 F.3d 1035, 1038 (8th Cir. 2016) (quoting *United States v. Willoughby*, 653 F.3d 738, 742–43 (8th Cir. 2011)).

[4] [5] In applying these factors, we have consistently held violent felonies committed at different times, different locations, or against different victims may qualify as separate qualifying convictions under the ACCA, even if the offenses were committed within a short period of time of each other. *See, e.g., Pledge*, 821 F.3d at 1038 (holding three burglaries committed on the same day were separate predicate offenses under the ACCA because the burglaries were committed in different locations against different victims); *United States v. Daniels*, 625 F.3d 529, 533–34 (8th Cir. 2010) (holding three burglaries committed over a one-year period on different dates and locations and against different victims qualified as separate violent felonies under the ACCA despite the fact the defendant was arrested on the same day for two of the burglaries). Here, Robinson committed three residential burglaries—each on different days, in different locations, and against different victims—over an approximate three-week span. We hold these offenses qualify as separate and distinct criminal episodes committed on occasions different from one another.

[6] Though Robinson was arrested on the same date for two of his qualifying burglary convictions and later sentenced on the same date for all three, we reject his argument that the district court should have treated any combination of these burglary offenses as a single offense under the ACCA. Robinson correctly concedes this argument is foreclosed by our precedent. The sentence enhancement under the ACCA does not require the predicate felonies be separated by arrest or conviction, but rather that the offenses be committed on occasions different from one another. *See, e.g., Willoughby*, 653 F.3d at 742–43.

We note the Supreme Court recently decided  *Wooden v. United States*, — U.S. —, 142 S. Ct. 1063, 212 L.Ed.2d 187 (2022), which Robinson suggests might change our analysis. It does not. In  *Wooden*, the Supreme Court held ten prior burglary convictions did not qualify as separate predicate offenses for purposes of the ACCA because the defendant had burglarized ten storage units on the same night, in the same location, and in a single uninterrupted course of conduct.  *Id.* at 1071. The Supreme Court explained each burglary was part of the same scheme and accomplished by the same means, and each burglary was essentially identical and intertwined with the others, as the defendant moved in a row from one unit to the next. *896  *Id.* Here, rather than committing numerous burglaries on a single day, at one location, in one continuous course of conduct, Robinson committed three different burglaries on separate and nonconsecutive days, at separate locations, arising from isolated conduct. Robinson's case is thus distinguishable from  *Wooden*.

[7] [8] Lastly, Robinson argues the ACCA sentence enhancement in this case violates the Sixth Amendment because the enhancement requirement that the offenses be “committed on occasions different from one another” was not charged in the indictment and decided by a jury or admitted in a guilty plea, but rather was decided by the district judge at sentencing. Robinson correctly concedes this argument is foreclosed by our precedent. *See United States v. Harris*, 794 F.3d 885, 887 (8th Cir. 2015) (explaining

“recidivism is not an element that must be admitted or proved to a jury”);   *United States v. Evans*, 738 F.3d 935, 936 (8th Cir. 2014) (“[T]he question of whether prior felonies were committed on separate occasions may be resolved by a judge.” (quoting  *United States v. Ramsey*, 498 F. App'x 653, 654 (8th Cir. 2013))). Further, precedent forecloses Robinson's argument that the district court here violated the Sixth Amendment when considering the non-elemental underlying facts of his burglaries, such as the dates on which the burglaries occurred, to establish he had committed three or more predicate felonies on occasions different from one another under the ACCA. In determining the specific dates on which an offense occurred for an ACCA sentence enhancement, a sentencing court does not violate the Sixth Amendment when it considers information outlining the underlying facts of an offense, such as those outlined in a presentence investigation report, in addition to the elements of the offenses of conviction. *See, e.g.*,   *Evans*, 738 F.3d at 936–37.

III. Conclusion

For the foregoing reasons, we affirm Robinson's sentence and the judgment of the district court.

All Citations

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Footnotes

¹ The Honorable P.K. Holmes, III, United States District Judge for the Western District of Arkansas.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 21-2396

United States of America

Appellee

v.

Jeremy Dale Robinson

Appellant

Appeal from U.S. District Court for the Western District of Arkansas - Ft. Smith
(2:21-cr-20002-PKH-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

November 01, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans