

**FEDERAL PUBLIC DEFENDER
WESTERN DISTRICT OF NORTH CAROLINA**

Anthony Martinez
Federal Public Defender

129 West Trade Street
Suite 300
Charlotte, NC 28202
(704) 374-0720
Fax (704) 374-0722



1 Page Avenue
Suite 210
Asheville, NC 28801
(828) 232-9992
Fax (828) 232-5575

January 16, 2019

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: Richard Orr v. United States, No. 17-6577

Dear Mr. Harris:

The above-captioned case has been distributed for the Court's consideration at its Conference of January 18, 2019. Yesterday's decision in *Stokeling v. United States*, No. 17-5554, held that the elements of Florida robbery, as defined by *Robinson v. State*, 692 So.2d 883 (Fla. 1997), satisfy the element-of-force clause under the violent-felony definition of the Armed Career Criminal Act. *See* Slip op. at 12-13 (analyzing "application of the standard articulated in *Robinson*"). As a result, *Stokeling* forecloses the primary argument set forth in Orr's Petition.

At the same time, the decision in *Stokeling* provides further support for Orr's alternative argument that his prior conviction did not qualify as an ACCA predicate based on "the law that applied at the time of that conviction," *McNeill v. United States*, 563 U.S. 816, 820 (2011). *See* Pet. at 5-6, 13-14; Reply at 8-9. Although a pure "snatching" offense would not satisfy the ACCA's element-of-force clause, the *Stokeling* majority explained that such a "snatching" offense falls outside the scope of Florida robbery under *Robinson*, which was the standard in place at the time of the defendant's conviction. *See* Slip op. at 12. At the time of Orr's prior conviction, however, the state courts permitted a robbery conviction based on a pure snatching that involved no resistance and no contemporaneous use of force. *See Andre v. State*, 431 So.2d 1042 (Fla. Ct. App. 1983). The *Robinson* decision explicitly overturned this prior precedent. *See* 692 So.2d at 886, 887 n.12.

In light of this analysis, the Court should grant certiorari, vacate the judgment below, and remand for further consideration in light of *Stokeling*. Alternatively, the Court should grant certiorari and undertake plenary review of the *McNeill* issue, which has generated significant confusion in the lower courts. *See* Pet. 13-14; Reply at 8-9.

I would appreciate your distributing this letter to the Members of the Court.
Thank you for your consideration.

Sincerely,

/s/ Joshua B. Carpenter
Counsel for Petitioner Richard Orr

CC: Solicitor General