

No. 17-7270

IN THE SUPREME COURT OF THE UNITED STATES

ROBAENON TREQUAN ALEXIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

JOHN P. CRONAN
Acting Assistant Attorney General

DAVID M. LIEBERMAN
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether petitioner's prior convictions for breaking and entering, in violation of North Carolina General Statute § 14-54 (2013), constitute convictions for "burglary" under the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e) (2) (B) (ii).

IN THE SUPREME COURT OF THE UNITED STATES

No. 17-7270

ROBAENON TREQUAN ALEXIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A3) is not published in the Federal Reporter but is reprinted at 697 Fed. Appx. 239.

JURISDICTION

The judgment of the court of appeals was entered on September 26, 2017. The petition for a writ of certiorari was filed on December 21, 2017. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Eastern District of North Carolina, petitioner was convicted on one count of carjacking, in violation of 18 U.S.C. 2119, and one count of unlawful possession of a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Judgment 1. He was sentenced to 180 months of imprisonment, to be followed by three years of supervised release. Id. at 2-3. The court of appeals affirmed. Pet. App. A1-A3.

1. On June 26, 2015, petitioner and a juvenile accomplice approached a female stranger, L.A., as she arrived home from work. Petitioner and the juvenile asked L.A. to drive them to their car in order to jump-start its battery. L.A. agreed, driving them to the parking lot of a local business. Petitioner then brandished a sawed-off shotgun, pointed it at L.A., and ordered her to exit the car or she would be killed. Petitioner and his accomplice drove away with L.A.'s car, house keys, credit cards, and handbag. Presentence Investigation Report (PSR) ¶ 7.

Four days later, law enforcement found petitioner and his accomplice asleep in L.A.'s car. A search of the car uncovered a 12-gauge shotgun and a small amount of marijuana. Petitioner and his accomplice provided written statements admitting to the carjacking. PSR ¶ 8.

2. A federal grand jury indicted petitioner on one count of carjacking, in violation of 18 U.S.C. 2119; one count of brandishing a firearm during a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A); one count of possessing an unregistered firearm, in violation of 26 U.S.C. 5841, 5861(d), and 5871; and one count of unlawful possession of a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). PSR ¶¶ 1-4. Petitioner entered a written plea agreement, in which he agreed to plead guilty to the carjacking and felon-in-possession counts. Id. ¶ 6. The government agreed to dismiss the remaining charges. Ibid.

Under 18 U.S.C. 924(a)(2), the default term of imprisonment for the offense of unlawful possession of a firearm following a felony conviction is zero to 120 months. The Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e)(1), increases that penalty to a term of 15 years to life if the defendant has "three previous convictions * * * for a violent felony or a serious drug offense." The ACCA defines a "violent felony" to include, inter alia, any crime punishable by more than one year that "is burglary, arson, or extortion, [or] involves use of explosives." 18 U.S.C. 924(e)(2)(B)(ii). Although the ACCA does not define "burglary," this Court in Taylor v. United States, 495 U.S. 575 (1990), construed the term to include "any crime, regardless of its exact definition or label, having the basic elements of unlawful or

unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime.” Id. at 599.

In its presentence investigation report, the Probation Office determined that petitioner’s three prior convictions for breaking and entering under North Carolina General Statute § 14-54 qualified as violent felonies under the ACCA. PSR ¶¶ 15-17. It accordingly reported that petitioner was subject to a mandatory minimum sentence of 15 years of imprisonment. Id. ¶¶ 50, 54. It further calculated petitioner’s advisory Guidelines sentencing range at 188 to 235 months. Id. ¶ 55.

At sentencing, petitioner objected to the ACCA classification, arguing that his prior North Carolina convictions did not qualify as convictions for generic “burglary” under the ACCA. 11/9/16 Sent. Tr. 6-10; see also Addendum to PSR ¶ 2. Petitioner asserted that the North Carolina offense sweeps more broadly than ACCA “burglary” because it includes burglary of nonpermanent structures such as trailers. 11/9/16 Sent. Tr. 9-10. The district court overruled the objection, 12/6/16 Sent. Tr. 6, concluding that North Carolina law limits the offense’s “locational element to buildings and structures,” making it “no broader than the locational element found in the [ACCA’s] generic definition” of burglary, id. at 4. The court also accepted the Probation Office’s Guidelines range calculations. Id. at 13. After considering the factors in 18 U.S.C. 3553(a), the court

sentenced petitioner to 180 months of imprisonment, to be followed by three years of supervised release, for the felon-in-possession offense, as well as a concurrent term of 180 months of imprisonment, to be followed by three years of supervised release, for the carjacking offense. Ibid.

3. The court of appeals affirmed in an unpublished per curiam opinion. Pet. App. A1-A3. The court adopted the analysis of its recent unpublished decision in United States v. Beatty, 702 Fed. Appx. 148 (4th Cir. 2017) (Pet. App. B1-B6), which held that a conviction under North Carolina General Statute § 14-54 (2013) “constitutes generic burglary, thus falling under ACCA’s ‘enumerated offense’ clause, 18 U.S.C. § 924(e) (2) (B).” Pet. App. A2. In Beatty, the court observed that Section 14-54 prohibits unlawful entry into “any * * * building,” defined to include “any dwelling, dwelling house, uninhabited house, building under construction, building within the curtilage of a dwelling house, and any other structure designed to house or secure within it any activity or property,” id. at B3 (quoting N.C. Gen. Stat. § 14-54(c) (2013)), while a separate provision, Section 14-56, covers “the breaking and entering of vehicles, boats, aircrafts and other watercrafts,” id. at B4 n.2. Citing the distinction between those statutes, as well as North Carolina case law, the court in Beatty determined that Section 14-54 “sweeps no more broadly than the generic elements of burglary.” Id. at B4 (quoting United States

v. Mungro, 754 F.3d 267, 272 (4th Cir.), cert. denied, 135 S. Ct. 734 (2014)); see id. at B5.

ARGUMENT

Petitioner renews the contention (Pet. 6-10) that the court of appeals erred in interpreting North Carolina General Statute § 14-54 (2013) to criminalize only generic “burglary” under the ACCA. The court’s unpublished disposition of that issue is correct, and its decision does not conflict with any decision of this Court or of another court of appeals. Further review is unwarranted.

1. The court of appeals correctly determined that a conviction under North Carolina General Statute § 14-54 constitutes a conviction for “generic” burglary under a straightforward application of Taylor v. United States, 495 U.S. 575 (1990). Taylor held that Congress intended “burglary” in the ACCA to have a “uniform definition” that encompasses any “unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime.” Id. at 580, 598. Taylor instructed courts to apply a “categorical approach” to determine whether a prior conviction meets that definition, examining “the statutory definition[]” of the previous crime in order to determine whether the jury’s finding of guilt, or the defendant’s plea, necessarily reflects conduct that constitutes

the "generic" form of burglary referenced in the ACCA. Id. at 600.

Employing that approach, the court of appeals correctly determined that Taylor's "burglary" definition -- which reaches the unlawful or unprivileged entry into a "building or structure," 495 U.S. at 599 -- maps onto Section 14-54, which punishes the breaking and entering of "any * * * building" with the intent to commit a crime. Pet. App. B3-B5 (citation omitted). The court noted that the North Carolina statute defines a "building" as "any dwelling, dwelling house, uninhabited house, building under construction, building within the curtilage of a dwelling house, and any other structure designed to house or secure within it any activity or property." N.C. Gen. Stat. § 14-54(c) (2013). And it explained that "North Carolina courts construe * * * [the] 'building' element in a manner that tracks generic burglary's 'building' element." Pet. App. B4. It cited, in particular, State v. Gamble, 286 S.E.2d 804, 806 (N.C. App. 1982), which limited the definition of "building" to "that which has -- or is intended to have -- one or more walls and a roof."

The court of appeals found this case to be different from cases concluding that state statutes prohibiting "the breaking and entering of vehicles, boats, aircrafts, and other watercrafts" sweep more broadly than "generic burglary." Pet. App. B4 n.2 (citing Mathis v. United States, 136 S. Ct. 2243, 2250 (2016) and

United States v. White, 836 F.3d 437, 445-446 (4th Cir. 2016)). The court observed that North Carolina has enacted a separate statute that punishes the “breaking and entering of vehicles, boats, aircrafts, and other watercrafts.” Ibid. (citing N.C. Gen. Stat. § 14-56 (2013)). Reasoning that the breaking-and-entering statute at issue here, N.C. Gen. Stat. § 14-54 (2013), does not reach those locations, the court determined that it “sweeps no broader than generic burglary’s ‘building’ element.” Pet. App. B5 (citing Taylor, 495 U.S. at 598).

2. Petitioner argues (Pet. 7-10) that the North Carolina breaking-and-entering statute sweeps beyond Taylor’s definition of generic “burglary” because, according to him, it extends to nonpermanent structures such as trailers and vehicles that serve as sleeping quarters.

a. The courts of appeals have reached differing conclusions on whether the burglary of a nonpermanent structure, such as a motor home, trailer, or tent, that is adapted or used for overnight accommodation can qualify as “burglary” under the ACCA. Compare Smith v. United States, 877 F.3d 720, 724-725 (7th Cir. 2017), petition for cert. pending, No. 17-7517 (filed Jan. 17, 2018), and United States v. Spring, 80 F.3d 1450, 1462 (10th Cir.), cert. denied, 519 U.S. 963 (1996), with United States v. Stitt, 860 F.3d 854, 857-860 (6th Cir. 2017) (en banc), petition for cert. pending, No. 17-765 (filed Nov. 21, 2017); United States v. Sims, 854 F.3d

1037, 1039-1040 (8th Cir. 2017), petition for cert. pending, No. 17-766 (filed Nov. 21, 2017); White, 836 F.3d at 445 (4th Cir.); and United States v. Grisel, 488 F.3d 844, 848-849 (9th Cir.) (en banc), cert. denied, 552 U.S. 970 (2007).¹

Petitioner's case does not implicate that disagreement. The Fourth Circuit has previously adopted petitioner's preferred rule that the burglary of a motor home or other vehicle designed for overnight accommodation does not qualify as generic "burglary" under the ACCA. See White, 836 F.3d at 445. The court of appeals in this case, however, construed the term "building" in North Carolina's breaking-and-entering statute to exclude such locations. In doing so, the court cited (Pet. App. B4 n.2) decisions from the North Carolina appellate courts explaining that mobile homes or trailers may qualify as "building[s]" for purposes of North Carolina General Statute § 14-54 (2013) only "if under the circumstances of their use and location at the time in question they have lost their character of mobility and have attained a character of permanence." State v. Bost, 286 S.E.2d 632, 635 (N.C. App. 1982); see also State v. Douglas, 282 S.E.2d 832, 834 (N.C.

¹ The Fifth Circuit recently declined to decide this question in en banc proceedings. See United States v. Herrold, No. 14-11317, 2018 WL 948373, at *14-*18 (Feb. 20, 2018); id. at *22-*26 (Haynes, J., dissenting).

App. 1981) ("The items listed in [N.C. Gen. Stat.] 14-54 denote the qualities of permanence and immobility.").²

b. Petitioner disputes the court of appeals' construction of the North Carolina breaking-and-entering statute and relevant state court decisions. His argument lacks merit. See n.2, supra. In any event, although the court of appeals was obligated to construe the North Carolina statute in the context of applying the ACCA, its construction is fundamentally a question of state law. As such, it does not warrant this Court's review. This Court has a "settled and firm policy of deferring to regional courts of appeals in matters that involve the construction of state law," and petitioner provides no reason to deviate from that practice in this case. Bowen v. Massachusetts, 487 U.S. 879, 908 (1988); see also, e.g., Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 16 (2004). Review is particularly unwarranted here because petitioner does not allege that the decision below conflicts with a decision from any other court of appeals. Indeed, no court of appeals has held that Section 14-54 covers mobile structures.

c. Petitioner does not ask this Court to hold his petition for a writ of certiorari if it grants the government's petition in Stitt, supra, or Sims, supra, or the defendant's petition in Smith,

² Petitioner's contrary argument rests primarily on a decision of the North Carolina Court of Appeals interpreting the term "dwelling house" for purposes of a different statute, N.C. Gen. Stat. § 14-51 (2017). See State v. Taylor, 428 S.E.2d 273, 274 (N.C. App. 1993).

supra. No hold is warranted. Stitt, Sims, and Smith raise the question whether burglary of a nonpermanent or mobile structure that is adapted or used for overnight accommodation may constitute "burglary" under the ACCA. Because the Fourth Circuit already has adopted petitioner's preferred approach on that issue, see White, 836 F.3d at 445, the decision in this case would not change even if this Court granted certiorari and adopted that same rule in Stitt, Sims, or Smith.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

JOHN P. CRONAN
Acting Assistant Attorney General

DAVID M. LIEBERMAN
Attorney

MARCH 2018