

No. _____

IN THE
Supreme Court of the United States

RALPH HALE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether this Court’s decisions in *Descamps v. United States*, 133 S. Ct. 2276 (2013), and *Mathis v. United States*, 136 S. Ct. 2243 (2016), which limit sentencing courts to the elements of the prior offenses, apply to the Armed Career Criminal Act (“ACCA”) provision requiring that a defendant have three prior offenses “committed on occasions different from one another,” 18 U.S.C. § 924(e)(1)?

2. Whether a prior conviction under Florida’s drug statute, Fla. Stat. § 893.13, which lacks the element of knowledge of the illicit nature of the substance, qualifies as a “serious drug offense” for purposes of the ACCA, § 924(e)(2)(A)(ii)?

3. Whether this Court should exercise its supervisory authority to order the Eleventh Circuit to correct its opinion, where the court of appeals erroneously increased the number of ACCA predicates being used against Petitioner in his appeal?

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Ralph Hale, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINION AND ORDER BELOW

The Eleventh Circuit's opinion, 705 F. App'x 876 (11th Cir. 2017), is unpublished and is provided in Appendix A. The Eleventh Circuit's order denying rehearing is provided in Appendix B.

JURISDICTION

The Eleventh Circuit issued its opinion on August 23, 2017. *See* Appendix A. After being granted an extension, Petitioner timely filed a petition for rehearing requesting that the Eleventh Circuit correct its opinion. *See* Appendices C and D. The Eleventh Circuit denied the rehearing petition on October 11, 2017. *See* Appendix B. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment to the U.S. Constitution states, in pertinent part:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury

The Sixth Amendment to the U.S. Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Armed Career Criminal Act, 18 U.S.C. § 924(e), provides in pertinent part:

- (1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).
- (2) As used in this subsection—
 - (A) the term “serious drug offense” means—
 - (i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46, for which a maximum term of imprisonment of ten years or more is prescribed by law; or
 - (ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law.

Absent the ACCA, the statutory maximum penalty for a violation of 18 U.S.C. § 922(g)(1) is 10 years in prison. See 18 U.S.C. § 924(a)(2).

Florida Statute § 893.13(1)(a) & (e) make it unlawful for any person to “sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance.”

Enacted effective May 2002, Florida Statute § 893.101 provides:

- (1) The Legislature finds that the cases of *Scott v. State*, Slip Opinion No. SC94701 (Fla. 2002) and *Chicone v. State*, 684 So.2d 736 (Fla. 1996), holding that the state must prove that the defendant knew of the illicit nature of a controlled substance found in his or her actual or constructive possession, were contrary to legislative intent.
- (2) The Legislature finds that knowledge of the illicit nature of a controlled substance is not an element of any offense under this chapter. Lack of

knowledge of the illicit nature of a controlled substance is an affirmative defense to the offenses of this chapter.

- (3) In those instances in which a defendant asserts the affirmative defense described in this section, the possession of a controlled substance, whether actual or constructive, shall give rise to a permissive presumption that the possessor knew of the illicit nature of the substance. It is the intent of the Legislature that, in those cases where such an affirmative defense is raised, the jury shall be instructed on the permissive presumption provided in this subsection.

STATEMENT OF THE CASE

1. In Florida, the date is not an element of the offense that must be proven to a jury beyond a reasonable doubt. A conviction therefore may rest upon facts that vary significantly from the date alleged in the charging document. *See, e.g., Tingley v. State*, 549 So. 2d 649, 650-51 (Fla. 1989); *Wykle v. State*, 659 So. 2d 1287, 1289 (5th DCA 1995); *Sanchez v. State*, 956 So. 2d 1261, 1262 (4th DCA 2007).

2. The Florida drug statute, Fla. Stat. § 893.13(1)(a) & (e), prohibits selling, manufacturing, or delivering, or possessing with the intent to sell, manufacture, or deliver, controlled substances. In 1996, the Florida Supreme Court interpreted § 893.13 to require that the prosecution must prove that the defendant (i) knew of the presence of the substance, and (ii) knew of the illicit nature of the substance (*e.g.*, knew it to be cocaine). *Chicone v. State*, 684 So. 2d 736, 738-46 (Fla. 1996); *see Scott v. State*, 808 So. 2d 166, 169 (Fla. 2002). The Florida Supreme Court required the latter knowledge element explaining, “if the legislature had intended to make criminals out of people who were wholly ignorant of the offending characteristics of items in their possession, and subject them to lengthy prison terms, it would have spoken more clearly to that effect.” *Chicone*, 684 So. 2d at 743 (citing *Staples v. United States*, 511 U.S. 600, 618-19 (1994)).

In response, the Florida legislature enacted § 893.101, effective in May 2002, eliminating the latter knowledge requirement as an element. Fla. Stat. § 893.101; *see State v. Adkins*, 96 So.

3d 412, 415-16 (Fla. 2012). After the enactment of § 893.101, the prosecution in Florida does not have to establish, beyond a reasonable doubt, that the defendant had knowledge of the nature of the substance in his possession (*e.g.*, knew it to be cocaine). See *Donawa v. U.S. Att’y Gen.*, 735 F.3d 1275, 1281-82 (11th Cir. 2013); *Adkins*, 96 So. 3d at 416.¹ Instead, the elements of the offense under § 893.13 are: (i) the defendant sold, manufactured, delivered, or possessed with the intent to sell, manufacture, or deliver, a certain substance; (ii) the substance was the charged controlled substance; and (iii) the defendant had knowledge of the presence of the substance. See *In re Standard Jury Instructions in Criminal Cases (No. 2005-03)*, 969 So. 2d 245, 247-57 (Fla. 2007).

3. In 2015, Petitioner was charged by indictment in the United States District Court for the Middle District of Florida with, among other offenses, possessing firearms after being convicted of felonies, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e). The indictment alleged that Petitioner was previously convicted of certain felony offenses, but it did not allege that any of the prior offenses constituted a “serious drug offense” or were “committed on occasions different from one another,” additional requirements of the ACCA. Doc. 1 at 3-4; 18 U.S.C. § 924(e).

Petitioner entered a guilty plea to the § 922(g)(1) offense, pursuant to a plea agreement; the remaining counts were dismissed. Docs. 23, 50. At his guilty plea hearing, Petitioner admitted that he had the felony convictions listed in the indictment, but he did not admit that any prior conviction constituted a “serious drug offense” or that the prior offenses were “committed on occasions different from one another.” Doc. 67 at 33-37; see Doc. 23 at 18-19.

The district court sentenced Petitioner to 15 years in prison, the ACCA’s mandatory-minimum term. Doc. 50. In seeking an ACCA sentence, the government relied upon

¹ A defendant may assert lack of knowledge of the illicit nature of the substance as an affirmative defense, but such knowledge is not an element of the offense. See *Donawa*, 735 F.3d at 1282-83; *Adkins*, 96 So. 3d at 416.

three prior Florida convictions: (i) aggravated battery; (ii) possession of cocaine with intent to deliver, in violation of Fla. Stat. § 893.13(1)(a); and (iii) delivery of a controlled substance within 1,000 feet of a church, in violation of Fla. Stat. § 893.13(1)(e)(2). See Doc. 33 (PSR) at ¶ 34 and pages 76, 87; Doc. 63 at 7; see also App. A at 2 (court of appeals opinion recognizing that the district court relied upon three prior convictions to impose the ACCA sentence).

The latter two convictions were resolved in state court in a guilty plea and sentencing hearing held on the same day (July 16, 2008). See Gov’t Sent. Ex. (attached hereto as Appendix E) at pages DISC-00184 to DISC-00185, DISC-00199 to DISC-00200; Doc. 33 (PSR) at ¶¶ 50-51 and pages 76-77, 87-88.² The government (and probation office) provided the district court with the charging documents and judgments for these prior convictions. The charging documents alleged that the two offenses occurred on June 12, 2007, and February 22, 2008. See App. E at pages DISC-00180, DISC-00194; Doc. 33 (PSR) at pages 85, 94. No plea colloquy was provided showing the basis of the convictions in state court. The judgments do not record the date of the offenses. See App. E at pages DISC-00179 to DISC-00205; Doc. 33 (PSR) at pages 76-96.

4. On appeal, the Eleventh Circuit affirmed Petitioner’s ACCA sentence. The court of appeals rejected Petitioner’s argument that the district court could not rely upon the non-elemental dates alleged in the charging documents to impose an ACCA sentence. The court concluded that *Descamps* and *Mathis* do not apply to the ACCA’s different-occasions provision, and therefore maintained that “sentencing courts may determine whether prior offenses were temporally distinct for ACCA purposes as long as they limit themselves to *Shepard*-approved documents.” App. A at 4-5.

² Petitioner disputed the “facts” of the prior convictions included in the PSR, contending that the sentencing court was limited to elements of the prior offenses taken from the *Shepard*-approved documents. See Doc. 33 (PSR) at page 29 (citing *Shepard v. United States*, 544 U.S. 13 (2005)).

The Eleventh Circuit also rejected Petitioner’s argument that prior convictions under Fla. Stat. § 893.13 do not constitute serious drug offenses because they lack the element of knowledge of the illicit nature of the substance. The court concluded that this challenge was foreclosed by *United States v. Smith*, 775 F.3d 1262, 1266-68 (11th Cir. 2014), *cert. denied*, 135 S. Ct. 2827 (2015). App. A at 3-4.

5. Petitioner filed a rehearing petition, asking the Eleventh Circuit to correct an error in its opinion. The Eleventh Circuit’s opinion stated that Petitioner had four qualifying prior convictions for ACCA purposes, including a 2008 Florida conviction for possession of cannabis with intent to sell, manufacture, or deliver, in violation of Fla. Stat. § 893.13(1)(a). App. A at 2; *see also id.* at 4 (“Moreover, while the district court referred to two of Hale’s § 893.13(1) convictions, he in fact has three such drug convictions, which are sufficient to support the ACCA enhancement.”); *id.* (“Second, although Hale’s three prior drug convictions are sufficient to support the ACCA enhancement . . .”). This Florida conviction is a third-degree felony with a statutory maximum of five years and therefore does not qualify as an ACCA predicate. *See* App. D at 1.

In asking the Eleventh Circuit to correct its opinion, Petitioner pointed out that the government had (rightly) never relied upon this prior conviction to seek an ACCA sentence. *See* App. D at 2. Petitioner therefore requested that the court’s opinion be corrected, contending that he should not be disadvantaged in his appeal by having the number of ACCA predicates being used against him increased. *See* App. D at 2-3 (citing *Greenlaw v. United States*, 554 U.S. 237, 243-54 (2008)).

The Eleventh Circuit denied the rehearing petition, without explanation. *See* App. B. Its clearly erroneous opinion thus stands.

REASONS FOR GRANTING THE WRIT

I. The Elements-Based Determinations Required by *Descamps* and *Mathis* Should Apply to the ACCA's Different-Occasions Provision

In the decision below, the Eleventh Circuit affirmed an ACCA sentence based upon non-elemental facts. *See* App. A at 4-5. Each of the prior convictions relied upon to impose the ACCA sentence was incurred in Florida. In Florida, the date is not an element of the offense, and a conviction may therefore rest upon facts that vary significantly from the date alleged in the charging document. *See, e.g., Tingley v. State*, 549 So. 2d 649, 650-51 (Fla. 1989); *Wykle v. State*, 659 So. 2d 1287, 1289 (5th DCA 1995); *Sanchez v. State*, 956 So. 2d 1261, 1262 (4th DCA 2007). In Petitioner's case, the only dates of the offenses included in the *Shepard*-approved documents were those dates alleged in the charging documents. No plea colloquy was submitted to the district court showing the basis for the convictions in state court. Further, the judgments do not record the date of the offenses. *See* App. E.

The question presented by this petition is whether this Court's decisions in *Descamps* and *Mathis* apply to the ACCA's requirement that the offenses be "committed on occasions different from one another." 18 U.S.C. § 924(e)(1). In *Descamps* and *Mathis*, this Court made clear that a sentencing court is limited to the elements of the prior offenses in determining whether a prior conviction qualifies as a violent felony for purposes of the ACCA. *Descamps*, 133 S. Ct. at 2281-89; *Mathis*, 136 S. Ct. at 2251-56. The Court also made clear, then, that a sentencing court may not rely upon the facts of the prior offenses to increase the statutory penalties under the ACCA. *Descamps*, 133 S. Ct. at 2283-86; *Mathis*, 136 S. Ct. at 2252-56.

The Court has imposed this limitation for Sixth Amendment reasons. The ACCA increases the statutory penalties, mandating a 15-year minimum prison term and increasing the maximum term from 10 years to life. 18 U.S.C. § 924(a)(2), (e). As this Court has held, except

for the “fact of a prior conviction,” “any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *Descamps*, 133 S. Ct. at 2288 (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000)) (internal quotation marks omitted). With respect to prior convictions relied upon for an ACCA sentence, “the only facts the [federal sentencing] court can be sure the jury . . . found [unanimously and beyond a reasonable doubt in the prior proceeding] are those constituting elements of the offense.” *Id.* And, in prior cases resolved by a guilty plea, the defendant “waive[d] his right to a jury determination of only that offense’s elements.” *Id.* To avoid a Sixth Amendment violation, this Court has directed that a sentencing court cannot “rely on its own finding about a non-elemental fact to increase a defendant’s maximum sentence.” *Id.* at 2289; *accord Mathis*, 136 S. Ct. at 2252 (“[A] judge cannot go beyond identifying the crime of conviction to explore the manner in which the defendant committed that offense. . . . He can do no more, consistent with the Sixth Amendment, than determine what crime, with what elements, the defendant was convicted of.”).

The Sixth Amendment concern occurs here when the determination of whether offenses were committed on different occasions is not limited to the elements of the prior offenses.³ The

³ See *United States v. Thompson*, 421 F.3d 278, 292-93 (4th Cir. 2005) (Wilkins, J., dissenting) (“Here, the majority holds that the date on which a prior crime was committed is a ‘fact of a prior conviction,’ but in my view it is a fact “*about* a prior conviction,” or, more precisely, a fact about an offense underlying a prior conviction. This distinction is not merely a matter of semantics. Although a defendant is entitled to a jury trial on the question of whether he committed a particular crime, in few, if any cases is a jury required to find that the offense occurred on a particular date. Thus, the protections that the Supreme Court identified as critical to the distinctiveness of the ‘fact of a prior conviction’ are not customarily afforded a defendant with regard to the date that a crime was committed.”) (citations and footnotes omitted); *United States v. Thomas*, 572 F.3d 945, 952-53 (D.C. Cir. 2009) (Ginsburg, J., concurring in part) (“The question whether the sentencing judge may rely solely upon an indictment to determine the date of a prior offense without running afoul of the Sixth Amendment or of the teaching of *Shepard* . . . is more difficult than the court lets on.”).

majority of circuits, including the Eleventh Circuit, have limited sentencing courts to the *Shepard*-approved documents as the source of information for the different-occasions determination.⁴ But the circuits, including the Eleventh Circuit in the decision below, have not limited sentencing courts to the elements of the prior offenses to find whether offenses were committed on different occasions. See App. A at 4-5.⁵ The Sixth Amendment concern that this Court has sought to resolve in *Descamps* and *Mathis* thus persists.

⁴ See *United States v. King*, 853 F.3d 267, 273-75 (6th Cir. 2017) (limiting sentencing courts to *Shepard*-approved documents and citing in support *United States v. Dantzler*, 771 F.3d 137, 139 (2d Cir. 2014); *Kirkland v. United States*, 687 F.3d 878, 886 & n.9 (7th Cir. 2012); *United States v. Boykin*, 669 F.3d 467, 472 (4th Cir. 2012); *United States v. Sneed*, 600 F.3d 1326, 1332 (11th Cir. 2010); *Thomas*, 572 F.3d at 950; *United States v. Fuller*, 453 F.3d 274, 279 (5th Cir. 2006); *United States v. Harris*, 447 F.3d 1300, 1305 (10th Cir. 2006); *United States v. Taylor*, 413 F.3d 1146, 1157 (10th Cir. 2005); but see *United States v. Evans*, 738 F.3d 935, 936 (8th Cir. 2014)).

⁵ For example, the Third Circuit affirmed an ACCA sentence based upon the non-elemental dates in the charging documents, stating:

Although the dates charged were not elements of the offenses, the charging documents nonetheless contained factual matter that was sufficient for the District Court to conclude that Blair’s 1991 convictions were for at least three robberies that occurred on separate occasions. Indeed, the date of an offense is integral to the fact of a prior conviction, and is customarily reflected in the kinds of documents that courts may, under *Shepard* and *Taylor* [*v. United States*, 495 U.S. 575 (1990)], use to determine whether a prior conviction exists.

United States v. Blair, 734 F.3d 218, 228 (3d Cir. 2013) (footnote omitted).

In more recent decisions, the Fourth and Sixth Circuits vacated ACCA sentences because the *Shepard*-approved documents did not establish that the offenses were committed on different occasions, but these circuits did not limit sentencing courts to the elements for this determination. See *King*, 853 F.3d at 274, 276-79 (“And to the extent that answering the different-occasions question requires a sentencing judge to identify the who, when, and where of the prior offenses, nothing we say here precludes a judge from doing so. We only hold that in identifying those facts, a sentencing judge is constrained to reviewing evidence approved by *Taylor* and *Shepard*”; recognizing that the “time and place of King’s robberies or attempted robberies were not elements of those offenses”; but concluding that the documents in that case did not establish the facts the defendant necessarily admitted in the prior guilty pleas); *United States v. Span*, 789 F.3d 320, 327, 331-32 (4th Cir. 2015) (vacating ACCA sentence because of discrepancies in the

Petitioner respectfully requests this Court’s review to resolve whether sentencing courts are limited to the elements of the prior offenses when determining whether those offenses were committed on different occasions. This issue is important and recurring. Resolution of this issue in Petitioner’s case would be outcome-determinative. Absent reliance upon non-elemental facts, Petitioner’s statutory maximum would be 10 years in prison. 18 U.S.C. § 924(a)(2). Petitioner accordingly seeks this Court’s review.

II. The Eleventh Circuit Has Erroneously Interpreted the ACCA to Include as Serious Drug Offenses Convictions Under Fla. Stat. § 893.13 that Lack an Element Requiring that the Defendant Know of the Illicit Nature of the Substance

Florida, unlike virtually every other state, does not require the prosecution to prove that a defendant knew of the illicit nature of the substance (*e.g.*, knew the substance was cocaine) to obtain a conviction under the Florida drug statute, § 893.13. *See* Fla. Stat. § 893.101 (eff. May 2002); *Donawa*, 735 F.3d at 1281-83; *Adkins*, 96 So. 3d at 423-24 & n.1 (Pariente, J., concurring in result) (recognizing that “Florida’s drug law is clearly out of the mainstream,” because the “overwhelming majority of jurisdictions” – either by statute or judicial decision – require such a knowledge element). In the decision below, the Eleventh Circuit maintained that convictions under § 893.13, although the statute lacks this *mens rea* element, constitute “serious drug offenses” under § 924(e)(2)(A)(ii), and affirmed the ACCA’s 15-year mandatory-minimum sentence. App. A at 3-4 (citing *Smith*, 775 F.3d at 1266).

Shepard-approved documents and therefore not reaching constitutional question, but stating: “Our precedent permits a sentencing court’s dive into *Shepard*-approved documents to sort out the facts of the underlying predicate conviction, not just its elements. *Descamps* intimates that this analysis exceeds a sentencing court’s proper role. Ultimately, we are persuaded, however, that the Supreme Court’s statements in *Descamps*, while foreboding, will most likely be confined to identification of a violent felony under the categorical approach to the ACCA. The question of whether a defendant’s predicate convictions were committed on different occasions under the ACCA more likely involves an altogether separate assessment outside of the strictures of the *Descamps* rationale.”).

This Court’s review is warranted, because the Eleventh Circuit’s reading of the ACCA is erroneous. Congress defined a “serious drug offense” to mean:

- (i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46, for which a maximum term of imprisonment of ten years or more is prescribed by law; or
- (ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law.

18 U.S.C. § 924(e)(2)(A).

In § 924(e)(2)(A)(i), Congress included federal offenses under the Controlled Substances Act (“CSA”). Those offenses have a *mens rea* element requiring that the defendant know of the illicit nature of the controlled substance.⁶

In § 924(e)(2)(A)(ii), Congress included state law offenses that, like the CSA, criminalize “manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance.”⁷ In so doing, Congress did not clearly include state law offenses – like the outlier Florida statute – that dispense with the *mens rea* element required by the CSA.

The Eleventh Circuit has concluded to the contrary, stating that “No element of *mens rea* with respect to the illicit nature of the controlled substance is expressed or implied by”

⁶ See *McFadden v. United States*, 135 S. Ct. 2298, 2302 (2015) (“We hold that [21 U.S.C.] § 841(a)(1) requires the Government to establish that the defendant knew he was dealing with ‘a controlled substance.’”); *Donawa*, 735 F.3d at 1281 (“The federal statute [§ 841(a)] . . . requires the government to establish, beyond a reasonable doubt and without exception, that the defendant had knowledge of the nature of the substance in his possession.”); *Sarmientos v. Holder*, 742 F.3d 624, 629 (5th Cir. 2014) (“Federal law is clear that, to be convicted under § 841(a)(1), the prosecutor must prove beyond a reasonable doubt that the defendant knew that the substance he manufactured, distributed, dispensed, or possessed was a controlled substance of some kind.”).

⁷ The only difference in the verbs is that § 841(a)(1) of the CSA includes dispensing, but § 924(e)(2)(A)(ii) does not.

§ 924(e)(2)(A)(ii). *Smith*, 775 F.3d at 1267; *see* App. A at 3-4. The Eleventh Circuit’s reading of the ACCA, however, conflicts with this Court’s decisions, which have “repeatedly held that ‘mere omission from a criminal enactment of any mention of criminal intent’ should not be read ‘as dispensing with it.’” *Elonis v. United States*, 135 S. Ct. 2001, 2009 (2015) (addressing 18 U.S.C. § 875(c)); *accord Staples v. United States*, 511 U.S. 600, 618-20 (1994) (concluding that mens rea was an element of the offense at issue; had Congress intended to dispense with mens rea requirement, it should have made that clear). Because the ACCA results in a particularly severe penalty – 15 years minimum in prison – it is unlikely that Congress meant to include state law offenses not requiring a “guilty mind” as ACCA predicates. *See Elonis*, 135 S. Ct. at 2009; *Staples*, 511 U.S. at 618-19.

The Eleventh Circuit’s interpretation of the ACCA, moreover, cannot be squared with this Court’s contextual statutory interpretations of the ACCA. In *Johnson v. United States*, 559 U.S. 133, 140-42 (2010), this Court defined “physical force” to mean “violent force,” keeping in mind that it was interpreting the ACCA term “violent felony,” § 924(e)(2)(B)(i). And in *Begay v. United States*, 553 U.S. 137, 144-46 (2008), this Court read the residual clause (including an offense that “otherwise involves conduct that presents a serious potential risk of physical injury to another”) to include purposeful crimes (and not strict liability offenses), by examining the enumerated offenses preceding the residual clause in § 924(e)(2)(B)(ii). Here, the ACCA term at issue is a “serious drug offense.” Congress specifically enumerated the federal CSA, which includes a *mens rea* element that the defendant know of the illicit nature of the substance, in § 924(e)(2)(A)(i). It is illogical to conclude that Congress silently dispensed with the *mens rea* requirement for state law offenses, when it used essentially the same verbs that appear in the CSA, § 841(a)(1), in § 924(e)(2)(A)(ii).

Petitioner respectfully requests this Court’s review of this important issue. He, like many others, is serving at least 15 years in prison based upon the Eleventh Circuit’s determination that prior convictions not requiring a “guilty mind” are nonetheless “*serious* drug offenses.” Resolution of this issue in Petitioner’s case would be outcome-determinative. A decision in his favor would affect two of the three prior convictions relied upon to sentence him under the ACCA, rendering him ineligible for the ACCA’s 15-year mandatory-minimum sentence. Petitioner accordingly seeks this Court’s review.

III. Petitioner Respectfully Requests that this Court Order the Eleventh Circuit to Correct Its Opinion

In the decision below, the Eleventh Circuit – on its own initiative – stated that Petitioner had four qualifying prior convictions for ACCA purposes, including a 2008 Florida conviction for possession of cannabis with intent to sell, manufacture, or deliver, in violation of Fla. Stat. § 893.13(1)(a). App. A at 2, 4. The government has never argued that this prior conviction qualifies as an ACCA predicate,⁸ and rightly so – this prior conviction is a third-degree felony in Florida with a statutory maximum of five years and does not qualify as a “serious drug offense” for ACCA purposes. See App. D at 1; 18 U.S.C. § 924(e)(2)(A)(ii). The Eleventh Circuit therefore incorrectly increased the number of predicates being used against Petitioner and disadvantaged Petitioner in his own appeal. See *Greenlaw*, 554 U.S. at 244 (“an appellate court may not alter a judgment to benefit a nonappealing party”).

Petitioner requested that the Eleventh Circuit correct its opinion, but the court refused to do so. See App. B, D. Because this Court is Petitioner’s only chance for relief from the Eleventh Circuit’s erroneous opinion – and its potential use against him in the future – Petitioner

⁸ See Doc. 33 (PSR) at ¶ 34; Doc. 63 at 7; Brief of the United States, 2017 WL 880514, at *3-5, 14 (11th Cir. Mar. 2, 2017).

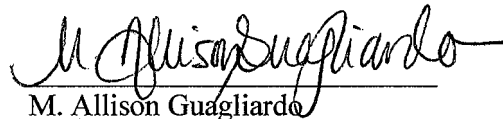
respectfully asks this Court to exercise its supervisory authority and order the Eleventh Circuit to correct its opinion. *See* Supreme Court Rule 10(a).

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

Donna Lee Elm
Federal Defender

A handwritten signature in black ink, reading "M. Allison Guagliardo", written over a horizontal line.

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Appendix A

Decision Below

705 Fed.Appx. 876

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S. Ct. of App. 11th Cir. Rule 36-2. United States Court of Appeals, Eleventh Circuit.

UNITED STATES of America, Plaintiff–Appellee,

v.

Ralph HALE, Defendant–Appellant.

No. 16-15550

|

Non-Argument Calendar

|

(August 23, 2017)

Synopsis

Background: Defendant was convicted in the United States District Court for the Middle District of Florida, No. 8:15-cr-00296-MSS-AAS-1, on his guilty plea, for possession of a firearm by a convicted felon, and sentenced to 180-months' imprisonment as armed career criminal under Armed Career Criminal Act (ACCA). Defendant appealed.

Holdings: The Court of Appeals held that:

[1] defendant's prior Florida drug convictions constituted serious drug offenses under ACCA;

[2] defendant's prior Florida conviction for aggravated battery with great bodily harm constituted violent felony under ACCA;

[3] Government sufficiently established the defendant's prior convictions were committed on occasions different from one another; and

[4] statute prohibiting a felon from shipping or transporting firearm or ammunition in interstate or foreign commerce did not violate Commerce Clause as applied to defendant.

Affirmed.

West Headnotes (4)

[1] Sentencing and Punishment

🔑 Miscellaneous particular offenses

Gun possession defendant's prior Florida convictions for possession of cocaine with intent to sell or deliver and for possession of cannabis with intent to sell, manufacturer, or deliver, were serious drug offenses under Armed Career Criminal Act (ACCA), as required for defendant to be sentenced as armed career criminal. 18 U.S.C.A. §§ 922(g), 924(e)(1); Fla. Stat. Ann. § 893.13(1)(a).

Cases that cite this headnote

[2] Sentencing and Punishment

🔑 Particular offenses

Gun possession defendant's prior Florida conviction for aggravated battery with great bodily harm qualified as a violent felony under Armed Career Criminal Act (ACCA), as required for defendant to be sentenced as armed career criminal; statute defendant was convicted of violating required the intentional or knowing causation of great bodily harm. 18 U.S.C.A. §§ 922(g)(1), 924(e)(1); Fla. Stat. Ann. § 784.045(1)(a)(1).

Cases that cite this headnote

[3] Sentencing and Punishment

🔑 Convictions counted as separate

Government sufficiently established that gun possession defendant's three prior convictions were committed on occasions different from one another, as required for defendant to qualify as armed career criminal under Armed Career Criminal Act (ACCA), based on the prior convictions; Government submitted *Shepard*-approved documents for each convictions, including charging documents

and judgments reflecting defendant's guilty pleas and sentences, which showed that each predicate offense occurred on a different date. 18 U.S.C.A. §§ 922(g), 924(e)(1).

Cases that cite this headnote

[4] Commerce

🔑 Weapons and explosives

Weapons

🔑 Violation of other rights or provisions

Statute prohibiting a felon from shipping or transporting firearm or ammunition in interstate or foreign commerce did not violate Commerce Clause as applied to gun-possession defendant who possessed two firearms in Florida; the firearms were manufactured in Massachusetts and Connecticut. U.S. Const. art. 1, § 8, cl. 3; 18 U.S.C.A. § 922(g).

Cases that cite this headnote

***877** Appeal from the United States District Court for the Middle District of Florida, D.C. Docket No. 8:15-cr-00296-MSS-AAS-1

Attorneys and Law Firms

Germaine Seider, Arthur Lee Bentley, III, Michael V. Leeman, U.S. Attorney's Office, Tampa, FL, for Plaintiff–Appellee.

Mara Allison Guagliardo, Frank William Zaremba, Federal Public Defender's Office, Tampa, FL, Rosemary Cakmis, Donna Lee Elm, Federal Public Defender's Office, Orlando, FL, for Defendant–Appellant.

Before HULL, JULIE CARNES and JILL PRYOR, Circuit Judges.

Opinion

PER CURIAM:

After pleading guilty, Ralph Hale appeals his 180-month sentence for possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(e)(1). In this direct appeal, Hale argues that the district court erred in

imposing an enhanced sentence under the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e)(1), because his underlying convictions do not qualify as ACCA predicate offenses. For the first time on appeal, Hale also argues that: (1) the district court erred in finding that he committed the qualifying predicate offenses on different dates; (2) his ACCA sentence violates the Fifth and Sixth Amendments because it is based on facts not charged in his indictment or admitted by him during his guilty plea; and (3) his firearm conviction must be vacated because 18 U.S.C. § 922(g) violates the Commerce Clause. After review, we affirm.

***878 I. FACTUAL BACKGROUND**

While executing a search warrant at defendant Hale's Florida residence, law enforcement found two loaded firearms in his dresser. Pursuant to a plea agreement, Defendant Hale pled guilty to one count of being a felon in possession of two firearms.¹

¹ Although Hale's plea agreement contained an appeal waiver, the government does not argue that Hale's appeal is barred by it. Therefore, we do not address the appeal waiver issue.

Among Hale's many prior convictions are: (1) a September 1995 Florida conviction for aggravated battery with great bodily harm, under Florida Statutes § 784.045(1)(a)(1); (2) a July 21, 2008 Florida conviction for possession of cocaine with intent to sell or deliver, under § 893.13(1)(a), which was committed in June 2007; (3) a July 21, 2008 Florida conviction for delivery of a controlled substance (cannabis) within 1000 feet of a church, under Florida Statutes § 893.13(1)(e)(2), which was committed in February 2008; and (4) a July 21, 2008 Florida conviction for possession of cannabis with intent to sell, manufacture, or deliver, under Florida Statutes § 893.13(1)(a), which was committed in August 2006.

At sentencing, the district court determined, based on the first three prior convictions listed above, that Hale was an armed career criminal under the ACCA. This designation resulted in an increased offense level under U.S.S.G. § 4B1.4(b)(3)(A) and an enhanced criminal history category under § 4B1.4(c), producing an advisory guidelines range of 188 to 235 months' imprisonment, and also subjected Hale to an enhanced mandatory minimum sentence of 15

years' imprisonment. The district court varied downward by 8 months and imposed the mandatory minimum 180-month prison term.

II. DISCUSSION

Hale argues that the district court erred in applying the ACCA because none of his underlying predicate convictions qualify under the ACCA. We generally review *de novo* whether a prior conviction is a violent felony or a serious drug offense within the meaning of the ACCA. United States v. White, 837 F.3d 1225, 1228 (11th Cir. 2016); United States v. Howard, 742 F.3d 1334, 1341 (11th Cir. 2014). Hale preserved his challenge to his Florida aggravated battery conviction, but not his challenge to his Florida drug convictions. In fact, at the sentencing hearing, Hale specifically disavowed pursuing his objections to his drug convictions because the government had provided the state court documents pertaining to these drug convictions, and Hale did not address the drug convictions in his sentencing memorandum. Thus, we review Hale's arguments as to his drug convictions only for plain error. See United States v. Jones, 743 F.3d 826, 828 (11th Cir. 2014) (explaining that any sentencing issues that were not raised in the district court are reviewed for plain error).

A. ACCA Qualifying Offenses

Under the ACCA, any person who violates 18 U.S.C. § 922(g) and has at least three prior convictions for a “violent felony” or “serious drug offense” receives a mandatory minimum sentence of 15 years' imprisonment. 18 U.S.C. § 924(e)(1). The ACCA defines a “violent felony” as any crime punishable by a term of imprisonment exceeding one year that:

(i) has an element the use, attempted use, or threatened use of physical force against the person of another; or

***879** (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

Id. § 924(e)(2)(B). The first prong of this definition is sometimes referred to as the “elements clause,” while the second prong contains the “enumerated crimes” and what is commonly called the “residual clause.” United

States v. Owens, 672 F.3d 966, 968 (11th Cir. 2012). In Johnson v. United States, the Supreme Court held that the ACCA's residual clause is unconstitutionally vague, but did not call into question the ACCA's elements clause or the enumerated crimes. See Johnson v. United States, — U.S. —, 135 S.Ct. 2551, 2557-58, 2563, 192 L.Ed.2d 569 (2015). The enumerated crimes are not at issue here, and Hale's appeal focuses on whether his Florida aggravated battery conviction qualifies as a violent felony under the elements clause.

Hale also contends his drug convictions do not qualify under the ACCA. The ACCA defines “serious drug offense” as “an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance” that carries a maximum sentence of ten years or more. 18 U.S.C. § 924(e)(2)(A)(ii). This Court has found that the definition of “serious drug offense” is broad and “includes any offense ‘involving’ the manufacture, distribution, or possession with intent to manufacture or distribute.” United States v. James, 430 F.3d 1150, 1155 (11th Cir. 2005) (rejecting the argument that the statutory offense must have as an element an intent to manufacture or distribute the controlled substance), overruled on other grounds by Johnson, — U.S. —, 135 S.Ct. at 2558; see also White, 837 F.3d at 1232-35 (explaining that because of the ACCA's use of the word “involving,” the statute of conviction need not exactly match the specific acts listed in the ACCA's definition of serious drug offense).

B. Analysis of Hale's Prior Convictions

[I] Here, the district court did not err in concluding that Hale had at least three qualifying prior convictions. First, the district court correctly determined that Hale's convictions under Florida Statutes § 893.13(1) are “serious drug offenses” under the ACCA. See United States v. Smith, 775 F.3d 1262, 1268 (11th Cir. 2014) (concluding that a violation of § 893.13(1) constitutes a serious drug offense for ACCA purposes), cert. denied, — U.S. —, 135 S. Ct. at 2557 (2015). Hale's argument that these convictions do not qualify because the Florida statute lacks a mens rea requirement is foreclosed by Smith, which considered and rejected this mens rea argument. See id. at 1267-68. Notably, this Court recently reaffirmed Smith's mens rea holding. See United States v. Pridgeon, 853 F.3d 1192, 1197-98 (11th Cir. 2017) (addressing “controlled substance offense” under U.S.S.G. § 4B1.2), petition for cert. filed, (U.S. July 13, 2017) (No. 17-5135). Under the

prior panel precedent rule, we are bound by our holding in Smith “unless and until it is overruled by this Court sitting en banc or by the Supreme Court.” See United States v. Vega-Castillo, 540 F.3d 1235, 1236 (11th Cir. 2008) (quotation marks omitted). Moreover, while the district court referred to two of Hale’s § 893.13(1) convictions, he in fact has three such drug convictions, which are sufficient to support the ACCA enhancement.

Hale points out that the charging document for one of his drug convictions under Florida Statutes § 893.13(1) alleged that he “did unlawfully deliver or attempt to deliver” cannabis within 1000 feet of a church. Hale contends, without citation to authority, that the definition of serious *880 drug offense does not include attempts. Hale’s argument, however, ignores the fact that his state court judgment for this offense indicates that Hale was convicted of delivery, not attempted delivery. In any event, given that this Court has said that the definition of serious drug offense is construed broadly, and Hale has not identified any binding precedent holding that an attempt may not qualify as a serious drug offense, Hale has not met his burden to show plain error. See United States v. Lejarde-Rada, 319 F.3d 1288, 1291 (11th Cir. 2003) (“It is the law of this circuit that, at least where the explicit language of a statute or rule does not specifically resolve an issue, there can be no plain error where there is no precedent from the Supreme Court or this Court directly resolving it.”).

[2] Second, although Hale’s three prior drug convictions are sufficient to support the ACCA enhancement, we also conclude that the district court correctly determined that Hale’s Florida conviction for aggravated battery with great bodily harm under § 784.045(1)(a)(1) qualifies as a “violent felony” under the ACCA. See Turner v. Warden Coleman FCI (Medium), 709 F.3d 1328, 1341-42 (11th Cir. 2013), abrogated on other grounds by Johnson, —U.S.—, 135 S.Ct. at 2557-2562. In Turner, this Court concluded that an aggravated battery under Florida Statutes § 784.045(1)(a)(1), which requires the intentional or knowing causation of great bodily harm, “is indubitably a violent felony under the elements clause.” Id. at 1341. Hale challenges Turner’s continuing validity in light of Descamps v. United States, 570 U.S. 254, 133 S.Ct. 2276, 186 L.Ed.2d 438 (2013), but this Court recently reaffirmed Turner as binding precedent. See United States v. Golden, 854 F.3d 1256, 1256-57 (11th Cir. 2017), petition for cert. filed, (U.S. June 30,

2017) (No. 17-5050). Therefore, Hale’s aggravated battery conviction constitutes a violent felony under the ACCA’s elements clause.

Accordingly, because Hale had at least three prior convictions for ACCA-qualifying offenses, the district court did not err by sentencing Hale as an armed career criminal.

C. ACCA’s Different Occasions Inquiry

Hale alternatively argues that the government failed to meet its burden of proving that his ACCA-qualifying offenses were committed on different occasions. In this regard, Hale contends that the sentencing court was not permitted to rely on offense dates that were not charged in his federal indictment or proven to a jury beyond a reasonable doubt.

Under the ACCA, the defendant’s three prior convictions must be for qualifying offenses that were “committed on occasions different from one another.” 18 U.S.C. § 924(e). The government has the burden to show the prior convictions “arose out of a separate and distinct criminal episode.” United States v. Sneed, 600 F.3d 1326, 1329 (11th Cir. 2010) (quotation marks omitted). The sentencing court may find that the defendant’s prior offenses were committed on different occasions without violating the Fifth and Sixth Amendments by looking only at those documents approved in Shepard v. United States, 544 U.S. 13, 125 S.Ct. 1254, 161 L.Ed.2d 205 (2005), such as the charging documents, judgments, and plea agreements. United States v. Weeks, 711 F.3d 1255, 1258-61 (11th Cir. 2013).²

2 Although this Court ordinarily reviews *de novo* whether predicate offenses occurred on different occasions, we review Hale’s claim for plain error because he did not raise it in the district court. See Jones, 743 F.3d at 828.

[3] *881 Here, the government submitted to the district court Shepard-approved documents for each conviction, including the charging documents and the judgments reflecting Hale’s guilty pleas and sentences. These Shepard documents showed that each predicate offense occurred on a different date. This Court has repeatedly held that sentencing courts may determine whether prior offenses were temporally distinct for ACCA purposes as long as they limit themselves to Shepard-approved documents.

See, e.g., United States v. Overstreet, 713 F.3d 627, 635-36 (11th Cir. 2013); Weeks, 711 F.3d at 1259; Sneed, 600 F.3d at 1332-33. Thus, Hale's argument that the dates of his offenses are non-elemental facts that cannot be found by the sentencing court in order to enhance his sentence under the ACCA fails.

Hale argues that our prior precedent has been abrogated by intervening Supreme Court decisions that state that a sentencing court may not rely on non-elemental facts to enhance a sentence. Hale's argument takes out of context language from decisions of this Court and the Supreme Court that addressed the application of the modified categorical approach to determine whether a prior offense qualifies as a violent felony under the ACCA. See, e.g., United States v. Mathis, — U.S. —, 136 S.Ct. 2243, 195 L.Ed.2d 604 (2016); Descamps v. United States, 570 U.S. 254, 133 S.Ct. 2276, 186 L.Ed.2d 438 (2013); Howard, 742 F.3d at 1345. None of these decisions addressed the different-occasions determination at issue here and, thus, none abrogated our prior precedent on this point. See United States v. Kaley, 579 F.3d 1246, 1255 (11th Cir. 2009); United States v. Blankenship, 382 F.3d 1110, 1141 (11th Cir. 2004). Moreover, because Hale did not point to a decision of this Court or the Supreme Court holding that a sentencing court may not rely on dates found in Shepard-approved documents to make the different-occasions determination, he has not shown plain error. See Lajarde-Rada, 319 F.3d at 1291.³

³ For the same reasons, there is no merit to Hale's argument that his ACCA-enhanced sentence violates the Fifth and Sixth Amendments because it was based on facts—the dates his predicate offenses were committed—that were not charged in his federal

indictment or proven to a jury beyond a reasonable doubt.

D. Commerce Clause Challenge to Hale's Conviction

[4] Hale argues that his conviction should be vacated because 18 U.S.C. § 922(g) violates the Commerce Clause both facially and as applied to him.⁴ As Hale acknowledges, however, this Court has repeatedly held that § 922(g) is facially constitutional under the Commerce Clause. See United States v. Jordan, 635 F.3d 1181, 1189 (11th Cir. 2011); United States v. Scott, 263 F.3d 1270, 1273 (11th Cir. 2001). Further, § 922(g) is constitutional as applied to “a defendant who possessed a firearm only intrastate” when the government demonstrated that the firearm moved in interstate commerce. Jordan, 635 F.3d at 1189. Hale admitted in his written plea agreement and during his plea colloquy that the two firearms in his possession in Florida were manufactured in Massachusetts and Connecticut. The government established that the firearms moved in interstate commerce, and § 922(g) is constitutional as applied to Hale. Accordingly, Hale has not shown error, much less plain *882 error, with respect to his Commerce Clause challenge.

⁴ We ordinarily review *de novo* the constitutionality of a federal statute. United States v. Jackson, 111 F.3d 101, 101 (11th Cir. 1997). Constitutional objections that were not raised before the district court, however, are reviewed only for plain error. United States v. Moriarty, 429 F.3d 1012, 1018 (11th Cir. 2005).

AFFIRMED.

All Citations

705 Fed.Appx. 876

Appendix B

Rehearing Denial

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

October 11, 2017

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 16-15550-EE
Case Style: USA v. Ralph Hale
District Court Docket No: 8:15-cr-00296-MSS-AAS-1

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Elora Jackson, EE/lt
Phone #: (404) 335-6173

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-15550-EE

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

RALPH HALE,

Defendant - Appellant.

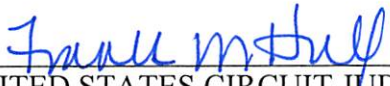
Appeal from the United States District Court
for the Middle District of Florida

BEFORE: HULL, JULIE CARNES and JILL PRYOR, Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by Ralph Hale is DENIED.

ENTERED FOR THE COURT:


UNITED STATES CIRCUIT JUDGE

ORD-41

Appendix C
Order Granting Extension to File
Petition for Rehearing



16-15550-EE USA v. Ralph Hale "Extension by phone" (8:15-cr-00296-MSS-AAS-1)
ecf_help to: allison_guagliardo 09/07/2017 05:07 PM
From: ecf_help@ca11.uscourts.gov
To: allison_guagliardo@fd.org

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United States Court of Appeals for the Eleventh Circuit

Notice of Docket Activity

The following transaction was filed on 09/07/2017

Case Name: USA v. Ralph Hale

Case Number: [16-15550](#)

Docket Text:

Over the phone extension granted by clerk as to Attorney Mara Allison Guagliardo for Appellant Ralph Hale. Created Awaiting Petition for Rehearing. Due on 09/27/2017 as to Appellant Ralph Hale.

Notice will be electronically mailed to:

Rosemary Cakmis
Mara Allison Guagliardo
Germaine Seider
Frank William Zaremba

Donna Lee Elm (*daily summary*)

Notice sent via US Mail to:

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TAMPA, FL 33602-4798

Appendix D

Petition for Rehearing

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 16-15550-EE

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RALPH HALE,

Defendant-Appellant.

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

PETITION FOR PANEL REHEARING

**Donna Lee Elm
Federal Defender**

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Counsel for Appellant Hale**

Appeal No. 16-15550-EE

United States of America v. Ralph Hale

CERTIFICATE OF INTERESTED PERSONS

The persons listed below have an interest in the outcome of this case:

Bentley, III, A. Lee

Cakmis, Rosemary

Elm, Donna Lee

Gray, Yvette C.

Guagliardo, M. Allison

Hale, Ralph

Jenkins, The Honorable Elizabeth A.

Leeman, Michael V.

Muldrow, W. Stephen

Rhodes, David P.

Sansone, The Honorable Amanda A.

Scriven, The Honorable Mary S.

Seider, Germaine M.

Skuthan, James T.

Sneed, The Honorable Julie S.

Zaremba, Frank

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ARGUMENT AND CITATION OF AUTHORITIES

The Panel affirmed Appellant Ralph Hale’s sentence imposed under the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e), stating that Mr. Hale has “three prior drug convictions” under Fla. Stat. § 893.13(1) that are “sufficient to support the ACCA enhancement.” Addendum A at 7 (emphasis added). Because the Panel’s opinion relies upon a prior conviction that does not qualify as an ACCA predicate – indeed, it was never relied upon by the government in the district court or on appeal – Mr. Hale respectfully requests that the Panel’s opinion be corrected.

The third prior drug conviction relied upon by this Court was a 2008 Florida conviction for possession of cannabis with intent to sell, manufacture, or deliver, under Fla. Stat. § 893.13(1)(a). Addendum A at 3. This offense was a third-degree felony and has a statutory maximum of five years. See Gov’t Sent. Exh. (Doc. 43)¹; Fla. Stat. §§ 893.13(1)(a)(2), 893.03(1)(c), 775.082(3)(d) (2006). To qualify as an ACCA predicate, a “serious drug offense” must have a statutory maximum of at least ten years. 18 U.S.C. § 924(e)(2)(A)(ii). This prior conviction, therefore, cannot qualify as an ACCA predicate. See, e.g., *Cobb v. United States*, 2012 WL 5907004, at *6 (M.D. Fla. Nov. 26, 2012).

¹ The first page of the judgment, showing that this offense was a third-degree felony, has been attached hereto as Addendum B.

The Panel opinion mistakenly relies upon this prior conviction as an ACCA predicate. Addendum at 7. Mr. Hale therefore respectfully requests that this Court's opinion be corrected to exclude this prior conviction as a potential ACCA predicate.²

Mr. Hale's request is important because his appeal should not result in an increase in the number of ACCA predicates being used against him. *See, e.g., Greenlaw v. United States*, 554 U.S. 237, 243-54 (2008). The government, which had the burden, has never relied on the third-degree felony conviction as an ACCA predicate. Instead, it relied upon two other drug convictions and an aggravated-battery conviction. *See* Doc. 33 (PSR) at ¶ 34; Doc. 63 at 7; Gov't Br. at 3-5, 14 (11th Cir. Mar. 2, 2017); *United States v. Jones*, 743 F.3d 826, 830-31 (11th Cir. 2014); *United States v. Canty*, 570 F.3d 1251, 1256-57 (11th Cir. 2009). The government has not appealed and did not attempt to assert the third-degree felony as a possible ACCA predicate in this appeal. *See* Gov't Br. at 17. Under such circumstances, Mr. Hale should not be disadvantaged in his appeal by having the number of ACCA predicates being used against him increased. *See Greenlaw*, 554

² By filing this petition, Mr. Hale is not waiving the challenges he has made to the ACCA sentence or to the prior convictions relied upon by the government to impose this sentence. *See* Initial Br. (11th Cir. Dec. 12, 2016); Reply Br. (11th Cir. Mar. 30, 2017).

U.S. at 244 (“an appellate court may not alter a judgment to benefit a nonappealing party”).

CONCLUSION

Based on the foregoing, Mr. Hale respectfully requests that this Court grant his petition for rehearing and correct its opinion.

Respectfully submitted,

Donna Lee Elm
Federal Defender

/s/ M. Allison Guagliardo
M. Allison Guagliardo
Florida Bar No. 0800031
Assistant Federal Defender
400 North Tampa Street, Suite 2700
Tampa, Florida 33602
Telephone: (813) 228-2715
Facsimile: (813) 228-2562
Counsel for Appellant Hale

CERTIFICATE OF COMPLIANCE

Excluding the portions identified in Fed. R. App. P. 32(f), this petition contains 512 words.

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of September, 2017, the foregoing was filed using the Court's Electronic Case Filing system, which will serve notification on Germaine M. Seider, Assistant United States Attorney.

/s/ M. Allison Guagliardo
M. Allison Guagliardo
Assistant Federal Defender

Addendum A

Panel Opinion

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-15550
Non-Argument Calendar

D.C. Docket No. 8:15-cr-00296-MSS-AAS-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RALPH HALE,

Defendant-Appellant.

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

(August 23, 2017)

Before HULL, JULIE CARNES and JILL PRYOR, Circuit Judges.

PER CURIAM:

After pleading guilty, Ralph Hale appeals his 180-month sentence for possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(e)(1). In this direct appeal, Hale argues that the district court erred in imposing an enhanced sentence under the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e)(1), because his underlying convictions do not qualify as ACCA predicate offenses. For the first time on appeal, Hale also argues that: (1) the district court erred in finding that he committed the qualifying predicate offenses on different dates; (2) his ACCA sentence violates the Fifth and Sixth Amendments because it is based on facts not charged in his indictment or admitted by him during his guilty plea; and (3) his firearm conviction must be vacated because 18 U.S.C. § 922(g) violates the Commerce Clause. After review, we affirm.

I. FACTUAL BACKGROUND

While executing a search warrant at defendant Hale’s Florida residence, law enforcement found two loaded firearms in his dresser. Pursuant to a plea agreement, Defendant Hale pled guilty to one count of being a felon in possession of two firearms.¹

Among Hale’s many prior convictions are: (1) a September 1995 Florida conviction for aggravated battery with great bodily harm, under Florida Statutes

¹Although Hale’s plea agreement contained an appeal waiver, the government does not argue that Hale’s appeal is barred by it. Therefore, we do not address the appeal waiver issue.

§ 784.045(1)(a)(1); (2) a July 21, 2008 Florida conviction for possession of cocaine with intent to sell or deliver, under § 893.13(1)(a), which was committed in June 2007; (3) a July 21, 2008 Florida conviction for delivery of a controlled substance (cannabis) within 1000 feet of a church, under Florida Statutes § 893.13(1)(e)(2), which was committed in February 2008; and (4) a July 21, 2008 Florida conviction for possession of cannabis with intent to sell, manufacture, or deliver, under Florida Statutes § 893.13(1)(a), which was committed in August 2006.

At sentencing, the district court determined, based on the first three prior convictions listed above, that Hale was an armed career criminal under the ACCA. This designation resulted in an increased offense level under U.S.S.G. § 4B1.4(b)(3)(A) and an enhanced criminal history category under § 4B1.4(c), producing an advisory guidelines range of 188 to 235 months' imprisonment, and also subjected Hale to an enhanced mandatory minimum sentence of 15 years' imprisonment. The district court varied downward by 8 months and imposed the mandatory minimum 180-month prison term.

II. DISCUSSION

Hale argues that the district court erred in applying the ACCA because none of his underlying predicate convictions qualify under the ACCA. We generally review de novo whether a prior conviction is a violent felony or a serious drug

offense within the meaning of the ACCA. United States v. White, 837 F.3d 1225, 1228 (11th Cir. 2016); United States v. Howard, 742 F.3d 1334, 1341 (11th Cir. 2014). Hale preserved his challenge to his Florida aggravated battery conviction, but not his challenge to his Florida drug convictions. In fact, at the sentencing hearing, Hale specifically disavowed pursuing his objections to his drug convictions because the government had provided the state court documents pertaining to these drug convictions, and Hale did not address the drug convictions in his sentencing memorandum. Thus, we review Hale’s arguments as to his drug convictions only for plain error. See United States v. Jones, 743 F.3d 826, 828 (11th Cir. 2014) (explaining that any sentencing issues that were not raised in the district court are reviewed for plain error).

A. ACCA Qualifying Offenses

Under the ACCA, any person who violates 18 U.S.C. § 922(g) and has at least three prior convictions for a “violent felony” or “serious drug offense” receives a mandatory minimum sentence of 15 years’ imprisonment. 18 U.S.C. § 924(e)(1). The ACCA defines a “violent felony” as any crime punishable by a term of imprisonment exceeding one year that:

- (i) has an element the use, attempted use, or threatened use of physical force against the person of another; or
- (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

Id. § 924(e)(2)(B). The first prong of this definition is sometimes referred to as the “elements clause,” while the second prong contains the “enumerated crimes” and what is commonly called the “residual clause.” United States v. Owens, 672 F.3d 966, 968 (11th Cir. 2012). In Johnson v. United States, the Supreme Court held that the ACCA’s residual clause is unconstitutionally vague, but did not call into question the ACCA’s elements clause or the enumerated crimes. See Johnson v. United States, ___ U.S. ___, 135 S. Ct. 2551, 2257-58, 2563 (2015). The enumerated crimes are not at issue here, and Hale’s appeal focuses on whether his Florida aggravated battery conviction qualifies as a violent felony under the elements clause.

Hale also contends his drug convictions do not qualify under the ACCA. The ACCA defines “serious drug offense” as “an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance” that carries a maximum sentence of ten years or more. 18 U.S.C. § 924(e)(2)(A)(ii). This Court has found that the definition of “serious drug offense” is broad and “includes any offense ‘involving’ the manufacture, distribution, or possession with intent to manufacture or distribute.” United States v. James, 430 F.3d 1150, 1155 (11th Cir. 2005) (rejecting the argument that the statutory offense must have as an element an intent to manufacture or distribute the controlled substance), overruled on other grounds by

Johnson, ___ U.S. at ___, 135 S. Ct. at 2558; see also White, 837 F.3d at 1232-35 (explaining that because of the ACCA’s use of the word “involving,” the statute of conviction need not exactly match the specific acts listed in the ACCA’s definition of serious drug offense).

B. Analysis of Hale’s Prior Convictions

Here, the district court did not err in concluding that Hale had at least three qualifying prior convictions. First, the district court correctly determined that Hale’s convictions under Florida Statutes § 893.13(1) are “serious drug offenses” under the ACCA. See United States v. Smith, 775 F.3d 1262, 1268 (11th Cir. 2014) (concluding that a violation of § 893.13(1) constitutes a serious drug offense for ACCA purposes), cert denied, ___ U.S. ___, 135 S. Ct. 2827 (2015). Hale’s argument that these convictions do not qualify because the Florida statute lacks a mens rea requirement is foreclosed by Smith, which considered and rejected this mens rea argument. See id. at 1267-68. Notably, this Court recently reaffirmed Smith’s mens rea holding. See United States v. Pridgeon, 853 F.3d 1192, 1197-98 (11th Cir. 2017) (addressing “controlled substance offense” under U.S.S.G. § 4B1.2), petition for cert. filed, (U.S. July 13, 2017) (No. 17-5135). Under the prior panel precedent rule, we are bound by our holding in Smith “unless and until it is overruled by this Court sitting en banc or by the Supreme Court.” See United States v. Vega-Castillo, 540 F.3d 1235, 1236 (11th Cir. 2008) (quotation marks

omitted). Moreover, while the district court referred to two of Hale's § 893.13(1) convictions, he in fact has three such drug convictions, which are sufficient to support the ACCA enhancement.

Hale points out that the charging document for one of his drug convictions under Florida Statutes § 893.13(1) alleged that he "did unlawfully deliver or attempt to deliver" cannabis within 1000 feet of a church. Hale contends, without citation to authority, that the definition of serious drug offense does not include attempts. Hale's argument, however, ignores the fact that his state court judgment for this offense indicates that Hale was convicted of delivery, not attempted delivery. In any event, given that this Court has said that the definition of serious drug offense is construed broadly, and Hale has not identified any binding precedent holding that an attempt may not qualify as a serious drug offense, Hale has not met his burden to show plain error. See United States v. Lejarde-Rada, 319 F.3d 1288, 1291 (11th Cir. 2003) ("It is the law of this circuit that, at least where the explicit language of a statute or rule does not specifically resolve an issue, there can be no plain error where there is no precedent from the Supreme Court or this Court directly resolving it.").

Second, although Hale's three prior drug convictions are sufficient to support the ACCA enhancement, we also conclude that the district court correctly determined that Hale's Florida conviction for aggravated battery with great bodily

harm under § 784.045(1)(a)(1) qualifies as a “violent felony” under the ACCA. See Turner v. Warden Coleman FCI (Medium), 709 F.3d 1328, 1341-42 (11th Cir. 2013), abrogated on other grounds by Johnson, ___ U.S. at ___, 135 S. Ct. at 2557-2562. In Turner, this Court concluded that an aggravated battery under Florida Statutes § 784.045(1)(a)(1), which requires the intentional or knowing causation of great bodily harm, “is indubitably a violent felony under the elements clause.” Id. at 1341. Hale challenges Turner’s continuing validity in light of Descamps v. United States, ___ U.S. ___, 133 S. Ct. 2276 (2013), but this Court recently reaffirmed Turner as binding precedent. See United States v. Golden, 854 F.3d 1256, 1256-57 (11th Cir. 2017), petition for cert. filed, (U.S. June 30, 2017) (No. 17-5050). Therefore, Hale’s aggravated battery conviction constitutes a violent felony under the ACCA’s elements clause.

Accordingly, because Hale had at least three prior convictions for ACCA-qualifying offenses, the district court did not err by sentencing Hale as an armed career criminal.

C. ACCA’s Different Occasions Inquiry

Hale alternatively argues that the government failed to meet its burden of proving that his ACCA-qualifying offenses were committed on different occasions. In this regard, Hale contends that the sentencing court was not permitted to rely on

offense dates that were not charged in his federal indictment or proven to a jury beyond a reasonable doubt.

Under the ACCA, the defendant's three prior convictions must be for qualifying offenses that were "committed on occasions different from one another." 18 U.S.C. § 924(e). The government has the burden to show the prior convictions "arose out of a separate and distinct criminal episode." United States v. Sneed, 600 F.3d 1326, 1329 (11th Cir. 2010) (quotation marks omitted). The sentencing court may find that the defendant's prior offenses were committed on different occasions without violating the Fifth and Sixth Amendments by looking only at those documents approved in Shepard v. United States, 544 U.S. 13, 125 S. Ct. 1254 (2005), such as the charging documents, judgments, and plea agreements. United States v. Weeks, 711 F.3d 1255, 1258-61 (11th Cir. 2013).²

Here, the government submitted to the district court Shepard-approved documents for each conviction, including the charging documents and the judgments reflecting Hale's guilty pleas and sentences. These Shepard documents showed that each predicate offense occurred on a different date. This Court has repeatedly held that sentencing courts may determine whether prior offenses were temporally distinct for ACCA purposes as long as they limit themselves to

²Although this Court ordinarily reviews de novo whether predicate offenses occurred on different occasions, we review Hale's claim for plain error because he did not raise it in the district court. See Jones, 743 F.3d at 828.

Shepard-approved documents. See, e.g., United States v. Overstreet, 713 F.3d 627, 635-36 (11th Cir. 2013); Weeks, 711 F.3d at 1259; Sneed, 600 F.3d at 1332-33. Thus, Hale's argument that the dates of his offenses are non-elemental facts that cannot be found by the sentencing court in order to enhance his sentence under the ACCA fails.

Hale argues that our prior precedent has been abrogated by intervening Supreme Court decisions that state that a sentencing court may not rely on non-elemental facts to enhance a sentence. Hale's argument takes out of context language from decisions of this Court and the Supreme Court that addressed the application of the modified categorical approach to determine whether a prior offense qualifies as a violent felony under the ACCA. See, e.g., Mathis v. United States, ___ U.S. ___, 136 S. Ct. 2243 (2016); Descamps v. United States, ___ U.S. ___, 133 S. Ct. 2276 (2013); Howard, 742 F.3d at 1345. None of these decisions addressed the different-occasions determination at issue here and, thus, none abrogated our prior precedent on this point. See United States v. Kaley, 579 F.3d 1246, 1255 (11th Cir. 2009); United States v. Blakenship, 382 F.3d 1110, 1141 (11th Cir. 2004). Moreover, because Hale did not point to a decision of this Court or the Supreme Court holding that a sentencing court may not rely on dates found

in Shepard-approved documents to make the different-occasions determination, he has not shown plain error. See Lajarde-Rada, 319 F.3d at 1291.³

C. Commerce Clause Challenge to Hale's Conviction

Hale argues that his conviction should be vacated because 18 U.S.C. § 922(g) violates the Commerce Clause both facially and as applied to him.⁴ As Hale acknowledges, however, this Court has repeatedly held that § 922(g) is facially constitutional under the Commerce Clause. See United States v. Jordan, 635 F.3d 1181, 1189 (11th Cir. 2011); United States v. Scott, 263 F.3d 1270, 1273 (11th Cir. 2001). Further, § 922(g) is constitutional as applied to “a defendant who possessed a firearm only intrastate” when the government demonstrated that the firearm moved in interstate commerce. Jordan, 635 F.3d at 1189. Hale admitted in his written plea agreement and during his plea colloquy that the two firearms in his possession in Florida were manufactured in Massachusetts and Connecticut. The government established that the firearms moved in interstate commerce, and § 922(g) is constitutional as applied to Hale. Accordingly, Hale has not shown error, much less plain error, with respect to his Commerce Clause challenge.

³For the same reasons, there is no merit to Hale's argument that his ACCA-enhanced sentence violates the Fifth and Sixth Amendments because it was based on facts—the dates his predicate offenses were committed—that were not charged in his federal indictment or proven to a jury beyond a reasonable doubt.

⁴We ordinarily review de novo the constitutionality of a federal statute. United States v. Jackson, 111 F.3d 101, 101 (11th Cir. 1997). Constitutional objections that were not raised before the district court, however, are reviewed only for plain error. United States v. Moriarty, 429 F.3d 1012, 1018 (11th Cir. 2005).

AFFIRMED.

Addendum B
State Court Judgment
(from Gov't Sent. Exh. (Doc. 43))

Probation Violator

IN THE CIRCUIT COURT, 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

DIVISION : L
CASE NUMBER : 06-CF-015813
OBTS NUMBER : 2901155028

CLERK OF COURT

2008 JUL 21 PM 12:07

STATE OF FLORIDA
VS
HALE, RALPH, W
DEFENDANT

FILED
FEB 14 2007

-----JUDGMENT-----

THE DEFENDANT HALE, RALPH, W BEING PERSONALLY BEFORE
THIS COURT REPRESENTED WITH ASSISTANT PUBLIC DEFENDER GARLAND, OLIVIA, JANE
THE ATTORNEY OF RECORD AND THE STATE REPRESENTED BY ASSISTANT STATE ATTORNEY
COLEMAN, BARBARA, W, AND HAVING

Entered a plea of Guilty to the following crime(s):1,3

COUNT	CRIME	OFFENSE STATUTE NUMBER	DEGREE OF COURT CRIME ACTION DATE
1	POSSESSION OF CANNABIS WITH IN	89313 1A -DRUG2300	FT ADJG 16-JUL-2008
3	POSSESSION OF DRUG PARAPHERNAL	893147 -DRUG8100	MF ADJG 14-FEB-2007

And no cause being shown why the defendant should not be adjudicated guilty,
it is ordered that the defendant is hereby adjudicated guilty of the above
crime(s).

Count 1 was previously sentenced on 14-FEB-2007 to SENTENCED DRUG OFFENDER PROB.

The following count(s) Nolle Prossed: 2

-----PAGE 01-----

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DEPUTY CLERK: SWILLIAMS Pat Frank, Clerk
of the Circuit Court Hillsborough County

DISC-00170

Appendix E

Government's Sentencing Exhibit
for the Prior Convictions at Issue
(personal identifying information redacted)

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

CASE NO: 8:15-cr-296-T-35AAS

RALPH HALE

GOVERNMENT'S EXHIBIT LIST

Exhibit No.	Date Identified	Date Admitted	Witness	Description
1		6/23/2016		Composite Exhibit (Charging instruments, judgments and other documents regarding the Defendant's criminal record)

BAGN
1-31-08

CASE NUMBER 2007-CF-018062
DIVISION L.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR
THE COUNTY OF HILLSBOROUGH, STATE OF FLORIDA

TAMPA DISTRICT

JAN 24 2008

, Fall Term, 2007

FILED
CLERK CIRCUIT COURT
2008 JAN 24 PM 3:56
HILLSBOROUGH COUNTY
CIRCUIT CLERK

STATE OF FLORIDA

V.

RALPH HALE

INFORMATION FOR:

COUNT ONE
FELON IN POSSESSION
OF A FIREARM
F.S. 790.23(1)

COUNT TWO
POSSESSION OF
CANNABIS WITH INTENT
TO SELL OR DELIVER
F.S. 893.13(1)(a)

COUNT THREE
POSSESSION OF COCAINE WITH
INTENT TO SELL OR DELIVER
F.S. 893.13 (1)(a)

COUNT FOUR
POSSESSION OF DRUG
PARAPHERNALIA
F.S. 893.147

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA, MARK A. OBER,
STATE ATTORNEY OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR THE COUNTY OF
HILLSBOROUGH, CHARGES THAT:

COUNT ONE

RALPH HALE, on the 12th day of June, 2007, in the County of Hillsborough and
State of Florida, did unlawfully and feloniously have in his care, custody,
or control; a firearm or ammunition or electric weapon or device, to-wit: a
firearm, the said RALPH HALE having previously been convicted of a felony in

Hillsborough County for the crime of Possession of Cannabis With Intent to Sell or Deliver on February 14, 2007.

COUNT TWO

RALPH HALE, on the 12th day of June, 2007, in the County of Hillsborough and State of Florida, did then and there knowingly, unlawfully, and feloniously possess with intent to sell, manufacture, or deliver, a controlled substance, to-wit: Cannabis, as named in Section 893.03(1)(c), Florida Statutes.

COUNT THREE

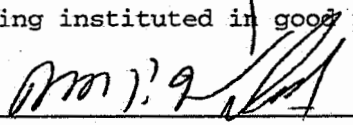
RALPH HALE, on the 12th day of June, 2007, in the County of Hillsborough and State of Florida, did then and there knowingly, unlawfully and feloniously possess with intent to sell or deliver a controlled substance, to-wit: Cocaine as named or described in Section 893.03 (2)(a), Florida Statutes.

COUNT FOUR

RALPH HALE, on the 12th day of June, 2007, in the County of Hillsborough and State of Florida, did unlawfully use, or possess with intent to use, drug paraphernalia, to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance named or described in Section 893.03, Florida Statutes; or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance named or described in Section 893.03, Florida Statutes. Contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Florida.

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

Personally appeared before me the undersigned Assistant State Attorney of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, who, being first duly sworn, says that these allegations as set forth in the foregoing INFORMATION are based upon facts that have been sworn to as true by the material witness or witnesses for the offense and which, if true, would constitute the offense therein charged, and that the prosecution is being instituted in good faith.

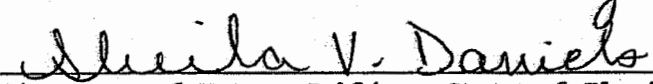

Assistant State Attorney of the
Thirteenth Judicial Circuit in and
For Hillsborough County, Florida

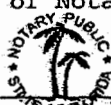
Florida Bar #

0159108

Sworn to and subscribed before me at Tampa, Florida

This 24th day of January, 2008


Signature of Notary Public - State of Florida



Sheila V. Statten-Daniels
Commission # DD493369
Expires November 21, 2009

Print, Type or Stamp Commissioned Name of Notary
And Date Commission Expires

Personally known X or Produced Identification _____

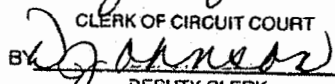
Type of Identification Produced

January 18, 2008
DON T. WILCOX/jrh

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE
AND CORRECT COPY OF THE DOCUMENT ON FILE IN
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL
THIS 20 DAY OF July, 20 08



CLERK OF CIRCUIT COURT
BY 
DEPUTY CLERK

DISC-00181

Parent
2007-062981/2007-CF-018062-D001 HALE, RALPH

Include
N/A

Consolidate
N/A

DEFENDANT: HALE, RALPH

DOB : [REDACTED]

RACE : [REDACTED]

GENDER : [REDACTED]

SSN : [REDACTED]

DL# : [REDACTED]

HAIR : [REDACTED]

EYES : [REDACTED]

ADDRESS : [REDACTED]

Agency : HCSO-200700347931

COUNT ONE
FELON IN POSSESSION
OF A FIREARM
F.S. 790.23(1)
2ND DEGREE FELONY
WEAP7005

COUNT TWO
POSSESSION OF
CANNABIS WITH INTENT
TO SELL OR DELIVER
F.S. 893.13(1)(a)
3RD DEGREE FELONY
DRUG2300

COUNT THREE
POSSESSION OF COCAINE WITH
INTENT TO SELL OR DELIVER
F.S. 893.13 (1)(a)
2ND DEGREE FELONY - (4)
DRUG1300

COUNT FOUR
POSSESSION OF DRUG
PARAPHERNALIA
F.S. 893.147
1ST DEGREE MISDEMEANOR
DRUG8100

IN THE CIRCUIT COURT, 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
DIVISION : L
CASE NUMBER : 07-CF-018062
OBTS NUMBER : 2902076859

2008 JUL 21 PM 12:07

STATE OF FLORIDA
VS
HALE, RALPH, W
DEFENDANT

-----JUDGMENT-----

THE DEFENDANT HALE, RALPH, W BEING PERSONALLY BEFORE
THIS COURT REPRESENTED WITH ASSISTANT PUBLIC DEFENDER GARLAND, OLIVIA, JANE
THE ATTORNEY OF RECORD AND THE STATE REPRESENTED BY ASSISTANT STATE ATTORNEY
COLEMAN, BARBARA, W, AND HAVING

Entered a plea of Guilty to the following crime(s): 1,2,3,4

COUNT	CRIME	OFFENSE STATUTE NUMBER	DEGREE OF COURT CRIME ACTION DATE
1	FELON IN POSSESSION OF A FIREA	79023 1	-WEAP7005 FS ADJG 16-JUL-2008
2	POSSESSION OF CANNABIS WITH IN	89313 1A	-DRUG2300 FT ADJG 16-JUL-2008
3	POSSESSION OF COCAINE WITH INT	89313 1A	-DRUG1300 FS ADJG 16-JUL-2008
4	POSSESSION OF DRUG PARAPHERNAL	893147	-DRUG8100 MF ADJG 16-JUL-2008

And no cause being shown why the defendant should not be adjudicated guilty,
it is ordered that the defendant is hereby adjudicated guilty of the above
crime(s).

The following count(s) sentenced to Time Served: 4

-----PAGE 01-----

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of the Circuit Court Hillsborough County

DISC-00184

STATE OF FLORIDA

VS.

FILED

CASE NUMBER: 07-CF-018062

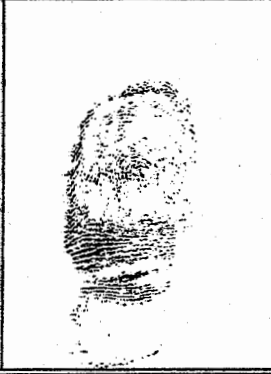
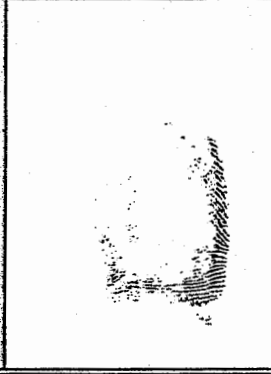
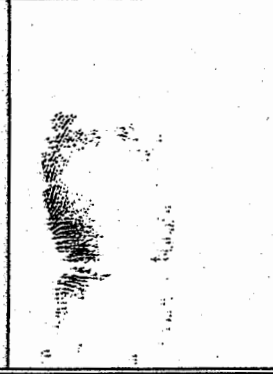
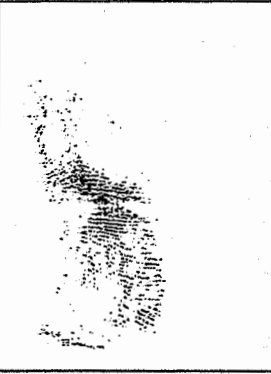
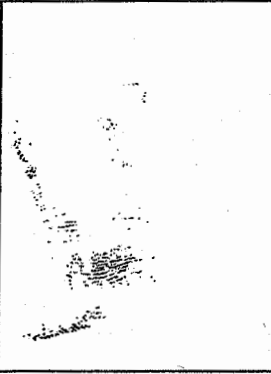
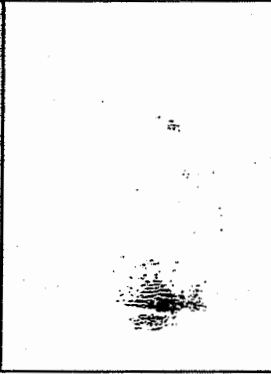
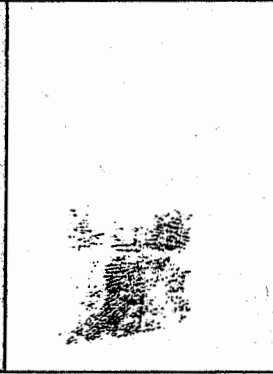
Hale, Ralph
DEFENDANT

JUL 16 '08

CO0194125

Clerk of the Circuit Court

FINGERPRINTS OF DEFENDANT

1. Right Thumb	2. Right Index	3. Right Middle	4. Right Ring	5. Right Little
				
6. Left Thumb	7. Left Index	8. Left Middle	9. Left Ring	10. Left Little
				

Fingerprints taken by: C Ham 1990 BA, BRF
NAME TITLE

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant,
Hale, Ralph
and that they were placed thereon by the defendant in my presence in open court this date.

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE
AND CORRECT COPY OF THE DOCUMENT ON FILE IN
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL

DONE AND ORDERED in open court in Hillsborough County, Florida, this 16 day of July, 20 08.



BY

[Signature]
CLERK OF CIRCUIT COURT

DEPUTY CLERK

[Signature]
JUDGE

DISC-00185

IN THE CIRCUIT COURT, 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
DIVISION : L
CASE NUMBER : 07-CF-018062
OBTS NUMBER : 2902076859

STATE OF FLORIDA
VS
HALE, RALPH, W
DEFENDANT

-----CHARGES/COSTS/FEE-----

A sum of \$49.00 pursuant to Section 938.03(1), Florida Statutes
(Crime Compensation Trust Fund)

A sum of \$1.00 pursuant to Section 938.03(1), Florida Statutes
(Crime Compensation Trust Fee)

\$2.00 pursuant to Section 938.15, Florida
Statutes (Criminal Justice Education by Municipalities and Counties)

A sum of \$65.00 pursuant to Section 939.185, Florida Statutes
(Circuit Criminal Additional Court Costs)

A sum of \$225.00 pursuant to Section 938.05(1) (A), Florida
Statutes (Criminal Justice Trust Fund)

A sum of \$100.00 pursuant to Section 938.29(1) (A), Florida
Statutes (Public Defender Fees)

A sum of \$50.00 pursuant to Section 27.562, Florida
Statutes (Public Defender Fees)

A sum of \$3.00 as a Court Cost pursuant to Section 938.01,
Florida Statutes (Assessments - Florida [Criminal Justice Trust Fund]).

A sum of \$100.00 pursuant to Section 938.27, Florida Statutes
(Prosecution Costs)

DONE AND ORDERED IN HILLSBOROUGH COUNTY, FLORIDA, THIS 16TH DAY OF July 2008

-----PAGE 03-----

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

JUDGE

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE
AND CORRECT COPY OF THE DOCUMENT ON FILE IN
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL
THIS 20 DAY OF July, 20 10



CLERK OF CIRCUIT COURT

BY

DEPUTY CLERK

DISC-00186

DEFENDANT HALE, RALPH, W

DIVISION : L
CASE NUMBER : 07-CF-018062
OBTS NUMBER : 2902076859

----- SENTENCE -----
AS TO COUNT(s) : 1,2,3

THE DEFENDANT, BEING PERSONALLY BEFORE THIS COURT, ACCOMPANIED BY THE
DEFENDANT'S ATTORNEY OF RECORD, ASSISTANT PUBLIC DEFENDER GARLAND, OLIVIA, JANE
AND HAVING BEEN ADJUDGED GUILTY HEREIN, AND THE COURT HAVING GIVEN
THE DEFENDANT AN OPPORTUNITY TO BE HEARD AND TO OFFER MATTERS IN MITIGATION OF
SENTENCE, AND TO SHOW CAUSE WHY THE DEFENDANT SHOULD NOT BE SENTENCED AS
PROVIDED BY LAW AND NO CAUSE BEING SHOWN

IT IS THE SENTENCE OF THE COURT THAT THE DEFENDANT :
Is hereby committed to the custody of the Department of Corrections for a
term of: 22 Months

DEFENDANT HALE, RALPH, W

DIVISION : L
CASE NUMBER : 07-CF-018062
OBTS NUMBER : 2902076859

----- OTHER PROVISIONS -----

AS TO COUNT(s) : 1

THE FOLLOWING MANDATORY/MINIMUM PROVISION(S) APPLY TO THE SENTENCE IMPOSED :

JAIL CREDIT: It is further ordered that the defendant shall be allowed a
total of 165 Days as credit for time incarcerated before
imposition of this sentence.

Count 1: STIPULATED

IT IS FURTHER ORDERED THAT THE SENTENCE FOR THIS COUNT SHALL RUN CONCURRENT
TO THE SENTENCE SET FORTH IN THE FOLLOWING COUNTS: 2,3

DEFENDANT HALE, RALPH, W

DIVISION : L
CASE NUMBER : 07-CF-018062
OBTS NUMBER : 2902076859

----- OTHER PROVISIONS -----

AS TO COUNT(s) : 2

THE FOLLOWING MANDATORY/MINIMUM PROVISION(S) APPLY TO THE SENTENCE IMPOSED :

JAIL CREDIT: It is further ordered that the defendant shall be allowed a
total of 165 Days as credit for time incarcerated before
imposition of this sentence.

Count 2: STIPULATED

IT IS FURTHER ORDERED THAT THE SENTENCE FOR THIS COUNT SHALL RUN CONCURRENT
TO THE SENTENCE SET FORTH IN THE FOLLOWING COUNTS: 1,3

DEFENDANT HALE, RALPH, W

DIVISION : L
CASE NUMBER : 07-CF-018062
OBTS NUMBER : 2902076859

----- OTHER PROVISIONS -----

AS TO COUNT(s) : 3

THE FOLLOWING MANDATORY/MINIMUM PROVISION(S) APPLY TO THE SENTENCE IMPOSED :

JAIL CREDIT: It is further ordered that the defendant shall be allowed a
total of 165 Days as credit for time incarcerated before
imposition of this sentence.

Count 3: STIPULATED

IT IS FURTHER ORDERED THAT THE SENTENCE FOR THIS COUNT SHALL RUN CONCURRENT
TO THE SENTENCE SET FORTH IN THE FOLLOWING COUNTS: 1,2

IT IS FURTHER ORDERED THAT THE COMPOSITE TERM OF ALL SENTENCES IMPOSED FOR
THE COUNTS SPECIFIED IN THIS ORDER SHALL RUN CONCURRENT WITH THE FOLLOWING
SPECIFIC SENTENCES: 06-CF-015813,08-CF-003726

DEFENDANT HALE, RALPH, W

DIVISION : L
CASE NUMBER : 07-CF-018062
OBTs NUMBER : 2902076859

----- OTHER PROVISIONS -----

Sentencing Guidelines filed.

IN THE EVENT THE ABOVE SENTENCE IS TO DEPARTMENT OF CORRECTIONS, THE SHERIFF OF HILLSBOROUGH COUNTY, FLORIDA, IS HEREBY ORDERED AND DIRECTED TO DELIVER THE DEFENDANT TO THE DEPARTMENT OF CORRECTIONS AT THE FACILITY DESIGNATED BY THE DEPARTMENT TOGETHER WITH A COPY OF THIS JUDGEMENT AND SENTENCE AND ANY OTHER DOCUMENTS SPECIFIED BY FLORIDA STATUTE

THE DEFENDANT IN OPEN COURT WAS ADVISED OF THE RIGHT TO APPEAL FROM THIS SENTENCE BY FILING NOTICE OF APPEAL WITHIN 30 DAYS FROM THIS DATE WITH THE CLERK OF THIS COURT AND THE DEFENDANT'S RIGHT TO THE ASSISTANCE OF COUNSEL IN TAKING THE APPEAL AT THE EXPENSE OF THE STATE ON SHOWING OF INDIGENCY.
DONE AND ORDERED IN HILLSBOROUGH COUNTY, FLORIDA, THIS 16TH DAY OF July 2008

----- PAGE 08 -----

JUDGE

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE
AND CORRECT COPY OF THE DOCUMENT ON FILE IN
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL
THIS 20 DAY OF July, 20 18



CLERK OF CIRCUIT COURT

BY

DEPUTY CLERK

DISC-00191

CASE NUMBER 2008-CF-003726
DIVISION 1

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR
THE COUNTY OF HILLSBOROUGH, STATE OF FLORIDA

TAMPA DISTRICT
MAR 12 2008

_____, Spring Term, 2008

STATE OF FLORIDA

V.

RALPH WILLIAM HALE

INFORMATION FOR:

COUNT ONE
DELIVERY OF A CONTROLLED
SUBSTANCE WITHIN 1000'
FEET OF A CHURCH
F.S. 893.13(1)(e)(2)

COUNT TWO
POSSESSION OF CANNABIS
(less than 20 grams)
F.S. 893.13(6)(b)

COUNT THREE
POSSESSION OF COCAINE
F.S. 893.13(6)(a)

COUNT FOUR
OBSTRUCTING OR OPPOSING
AN OFFICER WITHOUT VIOLENCE
F.S. 843.02

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA, MARK A. OBER,
STATE ATTORNEY OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR THE COUNTY OF
HILLSBOROUGH, CHARGES THAT:

COUNT ONE

RALPH WILLIAM HALE, on the 22nd day of February, 2008, in the county of
Hillsborough and state of Florida, did unlawfully deliver or attempt to
deliver a controlled substance named or described in Florida Statutes Section
893.03(1)(c), to-wit: Cannabis, within 1000 feet of a physical place for

worship at which a church or religious organization regularly conducts religious services.

COUNT TWO

RALPH WILLIAM HALE, on the 22nd day of February, 2008, in the County of Hillsborough and State of Florida, did unlawfully possess not more than twenty (20) grams of Cannabis, commonly known as marijuana, a further description of which is to the Assistant State Attorney unknown.

COUNT THREE

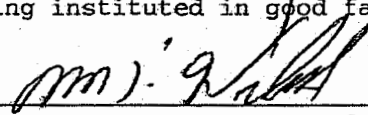
RALPH WILLIAM HALE, on the 22nd day of February, 2008, in the County of Hillsborough and State of Florida, did then and there knowingly, unlawfully and feloniously possess a controlled substance, to-wit: Cocaine, as named or described in Section 893.03(2)(a), Florida Statutes.

COUNT FOUR

RALPH WILLIAM HALE, on the 22nd day of February, 2008, in the County of Hillsborough and State of Florida, did unlawfully obstruct or oppose M. BRISSENDEN of the TAMPA POLICE DEPARTMENT in the lawful execution of a legal duty or in the execution of legal process, without doing violence to the said M. BRISSENDEN. Contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Florida.

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

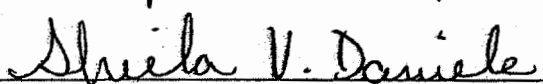
Personally appeared before me the undersigned Assistant State Attorney of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, who, being first duly sworn, says that these allegations as set forth in the foregoing INFORMATION are based upon facts that have been sworn to as true by the material witness or witnesses for the offense and which, if true, would constitute the offense therein charged, and that the prosecution is being instituted in good faith.


Assistant State Attorney of the
Thirteenth Judicial Circuit in and
For Hillsborough County, Florida

Florida Bar # **0159108**

Sworn to and subscribed before me at Tampa, Florida

This 12th day of March, 2008


Signature of Notary Public - State of Florida



Sheila V Staton-Daniels
Commission # DD493369
Expires November 21, 2009

Print, Type or Stamp Commissioned Name of Notary
And Date Commission Expires

Personally known X or Produced Identification _____

Type of Identification Produced

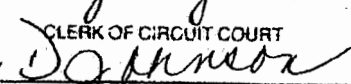
March 10, 2008
DON T. WILCOX/ar

Parent
2008-014330/2008-CF-003726-D001 HALE, RALPH

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE
AND CORRECT COPY OF THE DOCUMENT ON FILE IN
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL
THIS 20 DAY OF July, 20 11



CLERK OF CIRCUIT COURT
BY 
DEPUTY CLERK

DISC-00196

Include
N/A

Consolidate
N/A

DEFENDANT: HALE, RALPH

DOB : [REDACTED]

RACE : [REDACTED]

GENDER : [REDACTED]

SSN : [REDACTED]

DL# : [REDACTED]

HAIR : [REDACTED]

EYES : [REDACTED]

ADDRESS : [REDACTED]

Agency : TPD-200800111309

COUNT ONE
DELIVERY OF A CONTROLLED
SUBSTANCE WITHIN 1000'
FEET OF A CHURCH
F.S. 893.13(1)(e)(2)
2ND DEGREE FELONY
DRUG9757

COUNT TWO
POSSESSION OF CANNABIS
(less than 20 grams)
F.S. 893.13(6)(b)
1ST DEGREE MISDEMEANOR
DRUG2103

COUNT THREE
POSSESSION OF COCAINE
F.S. 893.13(6)(a)
3RD DEGREE FELONY - (3)
DRUG1101

COUNT FOUR
OBSTRUCTING OR OPPOSING
AN OFFICER WITHOUT VIOLENCE
F.S. 843.02
1ST DEGREE MISDEMEANOR
COPS1000

IN THE CIRCUIT COURT, 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

DIVISION : L

CASE NUMBER : 08-CF-003726

OBTS NUMBER : 2902076859

2008 JUL 21 PM 12:07

STATE OF FLORIDA

VS

HALE, RALPH, W

DEFENDANT

-----JUDGMENT-----

THE DEFENDANT HALE, RALPH, W BEING PERSONALLY BEFORE
THIS COURT REPRESENTED WITH ASSISTANT PUBLIC DEFENDER GARLAND, OLIVIA, JANE
THE ATTORNEY OF RECORD AND THE STATE REPRESENTED BY ASSISTANT STATE ATTORNEY
COLEMAN, BARBARA, W, AND HAVING

Entered a plea of Guilty to the following crime(s):1,2,3,4

COUNT	CRIME	OFFENSE STATUTE NUMBER	DEGREE OF COURT CRIME ACTION DATE
1	DELIVER CONTROLLED SUBST WITHN	89313 1E2 -DRUG9757	FS ADJG 16-JUL-2008
2	POSSESSION OF CANNABIS LESS T	89313 6B -DRUG2103	MF ADJG 16-JUL-2008
3	POSSESSION OF COCAINE	89313 6A -DRUG1101	FT ADJG 16-JUL-2008
4	OBSTRUCTING OR OPPOSING AN OFF	84302 -COPS1000	MF ADJG 16-JUL-2008

And no cause being shown why the defendant should not be adjudicated guilty,
it is ordered that the defendant is hereby adjudicated guilty of the above
crime(s).

The following count(s) sentenced to Time Served: 2,4

STATE OF FLORIDA

VS.

CASE NUMBER: 08-CF-003726
000194/25

Harley, Ralph
DEFENDANT

FILED

JUL 16 '08

Clerk of the Circuit Court
FINGERPRINTS OF DEFENDANT

1. Right Thumb	2. Right Index	3. Right Middle	4. Right Ring	5. Right Little
				
6. Left Thumb	7. Left Index	8. Left Middle	9. Left Ring	10. Left Little
				

Fingerprints taken by: C. Ham 1990 Bailiff
NAME TITLE

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant,
Harley, Ralph, and that they were placed thereon by the defendant in my
presence in open court this date.

DONE AND ORDERED in open court of Alachua County, Florida, this 16 day of
July, 20 08.

STATE OF FLORIDA
COUNTY OF ALACHUA
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE
AND CORRECT COPY OF THE DOCUMENT ON FILE IN
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL
THIS 20 DAY OF July, 20 08



CLERK OF CIRCUIT COURT
BY [Signature]
DEPUTY CLERK

JUDGE

DISC-00200

IN THE CIRCUIT COURT, 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
DIVISION : L
CASE NUMBER : 08-CF-003726
OBTS NUMBER : 2902076859

STATE OF FLORIDA
VS
HALE, RALPH, W
DEFENDANT

-----CHARGES/COSTS/FEE-----

A sum of \$49.00 pursuant to Section 938.03(1), Florida Statutes
(Crime Compensation Trust Fund)

A sum of \$1.00 pursuant to Section 938.03(1), Florida Statutes
(Crime Compensation Trust Fee)

\$2.00 pursuant to Section 938.15, Florida
Statutes (Criminal Justice Education by Municipalities and Counties)

A sum of \$65.00 pursuant to Section 939.185, Florida Statutes
(Circuit Criminal Additional Court Costs)

A sum of \$225.00 pursuant to Section 938.05(1) (A), Florida
Statutes (Criminal Justice Trust Fund)

A sum of \$100.00 pursuant to Section 938.29(1) (A), Florida
Statutes (Public Defender Fees)

A sum of \$50.00 pursuant to Section 27.562, Florida
Statutes (Public Defender Fees)

A sum of \$3.00 as a Court Cost pursuant to Section 938.01,
Florida Statutes (Assessments - Florida [Criminal Justice Trust Fund]).

A sum of \$50.00 pursuant to Section 775.083 Florida Statutes
(BOCC - County Crime Prevention)

Pay a fine of \$500.00 ,pursuant to section 775.083, Florida Statutes

Pay \$25.00 , as the 5% surcharge required by section 938.04,
Florida Statutes.

A sum of \$100.00 pursuant to Section 938.27, Florida Statutes
(Prosecution Costs)

DONE AND ORDERED IN HILLSBOROUGH COUNTY, FLORIDA, THIS 16TH DAY OF July 2008

-----PAGE 03-----

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE
AND CORRECT COPY OF THE DOCUMENT ON FILE IN
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL
THIS 20 DAY OF July 2015



CLERK OF CIRCUIT COURT

BY *[Signature]*
DEPUTY CLERK

DISC-00201

DEFENDANT HALE, RALPH, W

DIVISION : L
CASE NUMBER : 08-CF-003726
OBTs NUMBER : 2902076859

----- SENTENCE -----
AS TO COUNT(s) : 1,3

THE DEFENDANT, BEING PERSONALLY BEFORE THIS COURT, ACCOMPANIED BY THE
DEFENDANT'S ATTORNEY OF RECORD, ASSISTANT PUBLIC DEFENDER GARLAND, OLIVIA, JANE
AND HAVING BEEN ADJUDGED GUILTY HEREIN, AND THE COURT HAVING GIVEN
THE DEFENDANT AN OPPORTUNITY TO BE HEARD AND TO OFFER MATTERS IN MITIGATION OF
SENTENCE, AND TO SHOW CAUSE WHY THE DEFENDANT SHOULD NOT BE SENTENCED AS
PROVIDED BY LAW AND NO CAUSE BEING SHOWN

IT IS THE SENTENCE OF THE COURT THAT THE DEFENDANT :
Is hereby committed to the custody of the Department of Corrections for a
term of: 22 Months

DEFENDANT HALE, RALPH, W

DIVISION : L
CASE NUMBER : 08-CF-003726
OBTS NUMBER : 2902076859

----- OTHER PROVISIONS -----

AS TO COUNT(s) : 1

THE FOLLOWING MANDATORY/MINIMUM PROVISION(S) APPLY TO THE SENTENCE IMPOSED :

JAIL CREDIT: It is further ordered that the defendant shall be allowed a
total of 145 Days as credit for time incarcerated before
imposition of this sentence.

Count 1: STIPULATED

IT IS FURTHER ORDERED THAT THE SENTENCE FOR THIS COUNT SHALL RUN CONCURRENT
TO THE SENTENCE SET FORTH IN THE FOLLOWING COUNTS: 3

DEFENDANT HALE, RALPH, W

DIVISION : L
CASE NUMBER : 08-CF-003726
OBTS NUMBER : 2902076859

----- OTHER PROVISIONS -----

AS TO COUNT(s) : 3

THE FOLLOWING MANDATORY/MINIMUM PROVISION(S) APPLY TO THE SENTENCE IMPOSED :

JAIL CREDIT: It is further ordered that the defendant shall be allowed a
total of 145 Days as credit for time incarcerated before
imposition of this sentence.

Count 3: STIPULATED

IT IS FURTHER ORDERED THAT THE SENTENCE FOR THIS COUNT SHALL RUN CONCURRENT
TO THE SENTENCE SET FORTH IN THE FOLLOWING COUNTS: 1

IT IS FURTHER ORDERED THAT THE COMPOSITE TERM OF ALL SENTENCES IMPOSED FOR
THE COUNTS SPECIFIED IN THIS ORDER SHALL RUN CONCURRENT WITH THE FOLLOWING
SPECIFIC SENTENCES: 06-CF-015813, 07-CF-018062

DEFENDANT HALE, RALPH, W

DIVISION : L
CASE NUMBER : 08-CF-003726
OBTs NUMBER : 2902076859

----- OTHER PROVISIONS -----
Sentencing Guidelines filed.

IN THE EVENT THE ABOVE SENTENCE IS TO DEPARTMENT OF CORRECTIONS, THE SHERIFF OF HILLSBOROUGH COUNTY, FLORIDA, IS HEREBY ORDERED AND DIRECTED TO DELIVER THE DEFENDANT TO THE DEPARTMENT OF CORRECTIONS AT THE FACILITY DESIGNATED BY THE DEPARTMENT TOGETHER WITH A COPY OF THIS JUDGEMENT AND SENTENCE AND ANY OTHER DOCUMENTS SPECIFIED BY FLORIDA STATUTE

THE DEFENDANT IN OPEN COURT WAS ADVISED OF THE RIGHT TO APPEAL FROM THIS SENTENCE BY FILING NOTICE OF APPEAL WITHIN 30 DAYS FROM THIS DATE WITH THE CLERK OF THIS COURT AND THE DEFENDANT'S RIGHT TO THE ASSISTANCE OF COUNSEL IN TAKING THE APPEAL AT THE EXPENSE OF THE STATE ON SHOWING OF INDIGENCY.
DONE AND ORDERED IN HILLSBOROUGH COUNTY, FLORIDA, THIS 16TH DAY OF July 2008

----- PAGE 07 -----

JUDGE

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE IN MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL
THIS 20 DAY OF July, 2016



CLERK OF CIRCUIT COURT

BY J. Johnson
DEPUTY CLERK

DISC-00205