

**In The
Supreme Court of The United States**

ROBERT VERNON SCOTT,

Petitioner,

V.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX A

JUDGMENT ORDER, entered in *United States v. Robert Vernon Scott*,
No. 17-4198, filed in the United States Court of Appeals for the Fourth
Circuit,
decided October 12, 2017

FILED: October 12, 2017

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4198
(2:12-cr-00881-MBS-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ROBERT VERNON SCOTT

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

APPENDIX B

UNPUBLISHED OPINION, entered in in *United States v. Robert Vernon Scott*, No. 17-4198, filed in the United States Court of Appeals for the Fourth Circuit, decided October 12, 2017

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4198

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERT VERNON SCOTT,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Margaret B. Seymour, Senior District Judge. (2:12-cr-00881-MBS-1)

Submitted: September 12, 2017

Decided: October 12, 2017

Before GREGORY, Chief Judge, THACKER, Circuit Judge, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Cameron Jane Blazer, BLAZER LAW FIRM, Mount Pleasant, South Carolina, for Appellant. Beth Drake, United States Attorney, Nick Bianchi, Assistant United States Attorney, Charleston, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert Vernon Scott pled guilty pursuant to a plea agreement to possession of a firearm and ammunition by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), (e)(1) (2012). Based on his prior South Carolina state convictions for armed robbery and distribution of crack cocaine, the district court sentenced Scott as an armed career criminal to 180 months' imprisonment. On appeal, Scott challenges his armed career criminal designation, asserting that his prior armed robbery convictions do not serve as predicates under the Armed Career Criminal Act (ACCA or "the act"), 18 U.S.C. § 924(e). For the reasons that follow, we affirm.

Scott argues that his prior convictions for armed robbery are not proper ACCA predicates because the convictions do not qualify as predicates under the act's enumerated offenses clause or force clause and that, after *Johnson v. United States*, 135 S. Ct. 2551 (2015) (holding residual clause of ACCA void for vagueness), the convictions no longer qualify under the act's residual clause. With respect to the force clause, Scott takes the position that the offense of armed robbery does not contain an element requiring the type of violent physical force needed to satisfy that clause.

The ACCA mandates imposition of a minimum term of 15 years' imprisonment for a defendant who violates 18 U.S.C. § 922(g) and "has three previous convictions" for a "violent felony or a serious drug offense, or both." 18 U.S.C. § 924(e)(1). "We review de novo whether a prior conviction qualifies as an ACCA violent felony." *United States v. Doctor*, 842 F.3d 306, 308 (4th Cir. 2016), *cert. denied*, 137 S. Ct. 1831 (2017). A violent felony includes "any crime punishable by imprisonment for a term exceeding

one year that has as an element the use, attempted use, or threatened use of physical force against the person of another.” *Id.* (internal quotation marks omitted). Physical force for ACCA purposes “means *violent* force—that is, force capable of causing physical pain or injury to another person.” *Johnson v. United States*, 559 U.S. 133, 140 (2010).

In *Doctor*, this court held that a South Carolina conviction for strong arm robbery qualifies as a predicate violent felony under the force clause of the ACCA. 842 F.3d at 312. This court concluded that “South Carolina has defined its common law robbery offense, whether committed by means of violence or intimidation, to necessarily include as an element the use, attempted use, or threatened use of physical force against the person of another.” *Id.* (internal quotation marks omitted). South Carolina “[a]rmed robbery includes all the elements of strong arm robbery.” *State v. Muldrow*, 559 S.E.2d 847, 850 (S.C. 2002) (citing *State v. Keith*, 325 S.E.2d 325 (S.C. 1985) (armed robbery is commission of common law robbery while armed with a deadly weapon)). *Doctor* thus forecloses Scott’s argument that his prior armed robbery convictions are not violent felonies under the ACCA’s force clause.* Further, after review of the record and the parties’ briefs, we reject as wholly without merit Scott’s efforts to distinguish *Doctor* or reject its application in this case.

Because Scott has three qualifying prior convictions that warrant his armed career criminal designation, we affirm the criminal judgment. We dispense with oral argument

* The parties do not dispute that if the lesser offense of strong arm robbery is a proper ACCA predicate, then armed robbery likewise qualifies.

because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX C

JUDGMENT ORDER, entered in *United States v. Robert Vernon Scott*,
No. 2:12-881, filed in the United States District Court for the District of
South Carolina,
entered March 30, 2017

UNITED STATES DISTRICT COURT

District of South Carolina

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

vs.

Case Number: 2:12-cr-00881-MBS-1

ROBERT VERNON SCOTT

USM Number: 24800-171

Cameron Blazer, CJA

Defendant's Attorney

THE DEFENDANT:

- ☒ pleaded guilty to Count 1.
- ☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.
- ☐ was found guilty on count(s) __ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:922(g)(1) and 18:924(e)	Please see indictment	6/23/12	1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)_____.
- ☐ All remaining counts are dismissed on the motion of the United States.
- ☐ Forfeiture provision is hereby dismissed on motion of the United States Attorney.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material changes in economic circumstances.

March 28, 2017

Date of Imposition of Judgment

/s/ Margaret B. Seymour

Signature of Judge

Marg aret B. Seymour, Senior United States District Judge
 Name and Title of Judge
March 30, 2017

Date

DEFENDANT: ROBERT VERNON SCOTT
CASE NUMBER: 2:12-cr-00881-MBS-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of one hundred eighty (180) months. The defendant shall pay a \$100.00 special assessment fee, due beginning immediately.

☒ The court makes the following recommendations to the Bureau of Prisons: The defendant shall be designated to the Federal Correctional Facility closest to his family in New York.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:
☐ at _____ ☐ a.m. ☐ p.m. on _____.
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
☐ before 2 p.m. on _____.
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ROBERT VERNON SCOTT**CASE NUMBER: 2:12-cr-00881-MBS-1****SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three (3) years. Within 72 hours of release from custody of the Bureau of Prisons, the defendant shall report in person to the probation office in the district to which the defendant is released. While on supervised release, the defendant shall comply with the following mandatory and standard conditions of supervision. 1. The defendant shall satisfactorily participate in **and complete** a Cognitive Behavioral Treatment Program as approved by the U.S. Probation Office. 2. The defendant shall participate in a program of testing for substance abuse as approved by the U.S. Probation Officer. 3. The defendant shall contribute to the costs of any treatment, drug testing and/or location monitoring not to exceed an amount determined reasonable by the court approved U.S. Probation Office's Sliding Scale for Services, and shall cooperate in securing any applicable third-party payment, such as insurance or Medicaid.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: ROBERT VERNON SCOTT
CASE NUMBER: 2:12-cr-00881-MBS-1

CRIMINAL MONETARY PENALTIES

The defendant shall pay the total criminal monetary penalties under the schedule of payments on Sheet 5.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	<u>\$100.00</u>	<u>\$</u>	<u>\$</u>

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case(AO245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$ _____	\$ _____	

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 5 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ The interest requirement is waived for the ☐ fine ☐ restitution.

☐ The interest requirement for the ☐ fine ☐ restitution is modified as follows:

**Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ROBERT VERNON SCOTT
CASE NUMBER: 2:12-cr-00881-MBS-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$100.00 special assessment fee, due immediately.
- ☐ not later than _____, or
- ☐ in accordance with ☐ C, ☐ D, or ☐ E, or ☐ F below: or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

As directed in the Preliminary Order of Forfeiture, filed _____ and the said order is incorporated herein as part of this judgment.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.