

A P P E N D I X A-1

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-10429-B

IN RE:

JAMES YOUNG,

Petitioner.

Application for Leave to File a Second or Successive
Motion to Vacate, Set Aside,
or Correct Sentence, 28 U.S.C. § 2255(h)

Before MARCUS, MARTIN, and JULIE CARNES, Circuit Judges.

BY THE PANEL:

Pursuant to 28 U.S.C. §§ 2255(h) and 2244(b)(3)(A), James Young has filed a *pro se* application seeking an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his federal sentence, 28 U.S.C. § 2255. Such authorization may be granted only if we certify that the second or successive motion contains a claim involving:

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and

convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h). A court of appeals “may authorize the filing of a second or successive application only if it determines that the application makes a *prima facie* showing that the application satisfies the requirements of this subsection.” *Id.*

§ 2244(b)(3)(C). Further, the court “shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.” *Id.* § 2244(b)(3)(D). We conclude that Young has failed to make a *prima facie* showing.

I. BACKGROUND

In 1994, Young was sentenced to 262 months’ imprisonment for the offense of possession of a firearm by a convicted felon, in violation of 18 U.S.C.

§ 922(g)(1). He was sentenced as an armed career criminal, pursuant to the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e).¹

¹ Section 924(e)(1) provides a sentence enhancement for a defendant who is convicted, under 18 U.S.C. § 922(g), of unlawful possession of a firearm, and who has three prior convictions for a violent felony or a serious drug offense. 18 U.S.C. § 924(e). Section 924(e)(2)(B) defines the term “violent felony” as any crime punishable by imprisonment for a term exceeding one year that (1) “has as an element the use, attempted use, or threatened use of physical force against the person of another” (known as the “elements clause”); (2) is a “burglary, arson, or extortion, [or] involves use of explosives” (known as the “enumerated offenses clause”), or (3) “otherwise involves

To be sentenced under the ACCA, a defendant must have at least three prior qualifying convictions. Young had numerous prior felony convictions, and six of those were deemed to be violent felonies by the district court. *Young v. FCC Coleman-Medium Warden*, 587 Fed. App'x 542, 543–44 (11th Cir. 2014) (“*Young I*”). Young indicates that five of these convictions were for burglary, in violation of Florida law, and one was for aggravated assault, also in violation of Florida law.

Young appealed to this Court. Judging from the opinion that resolved this appeal, he apparently did not contest the district court’s finding that he had at least three prior predicate convictions. We affirmed Young’s conviction and sentence in all respects. *See United States v. Young*, 115 F.3d 834 (11th Cir. 1997) (“*Young I*”). In 2000, Young filed his first § 2255 motion to vacate, which was subsequently dismissed as untimely in 2001. *Young II*, 587 Fed. App'x at 544. Thereafter, he sought leave to file a second or successive § 2255 motion in 2005 and in 2006, both of which applications were denied. *Id.* A subsequent motion to correct sentence was denied by the district court in 2008 as being an impermissibly successive § 2255 motion. *Id.*

Finally, in 2010, he filed a § 2241 habeas petition arguing actual innocence based on his contention that he lacked the three prior predicate convictions

conduct that presents a serious potential risk of physical injury to another” (known as the “residual clause”). 18 U.S.C. § 924(e)(2)(B).

necessary for ACCA status.² *Id.* To be viable, this type of motion required a determination that Young could avail himself of the savings clause found in § 2255(e). The district court concluded that Young could not rely on that clause “because his claims were not based on retroactive, ‘circuit law-busting’ Supreme Court decisions.” *Id.* at 545. We affirmed, concluding, among other things, that Young had “identified no relevant, retroactively applicable, Supreme Court cases that overturned any prior precedent.” *Id.* at 546.

II. DISCUSSION

In his current application for leave to file a second or successive § 2255 motion, Young once again seeks to challenge the district court’s decision to sentence him as an armed career criminal, arguing that he lacked the requisite three predicate convictions. He relies on *Johnson v. United States*, 135 S. Ct. 2551 (2015), in which the Supreme Court held that the residual clause of the ACCA is unconstitutionally vague. Notably, however, Young does not assert that the residual clause played any role in the district court’s determination in 1994 that Young had sustained three prior predicate offenses.

² Based on the information before us, we cannot determine what challenges Young pursued in his four prior § 2255 motions.

But he faces an even more formidable obstacle in his quest for permission to file this successive petition: § 2255(h)(2). Section 2255(h)(2) permits a second or successive § 2255 motion based on a new rule of constitutional law, but only for a claim involving a new rule “made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.” We have held, however, that *Johnson* is not a decision that has been made retroactive by the Supreme Court to cases on collateral review. See *In re Franks*, No. 15-15456, manuscript op. at 2–3, 9–10 (11th Cir. Jan. 6, 2016); *In re Rivero*, 797 F.3d 986, 989–90 (11th Cir. 2015). Accordingly, the Supreme Court’s decision in *Johnson* provides us with no basis to authorize the filing of a successive § 2255 motion.

We are aware that the Supreme Court has recently granted certiorari in *Welch v. United States*, 136 S. Ct. 790 (2016), to address whether *Johnson* announced a new substantive rule of constitutional law that applies retroactively to cases on collateral review. We are also aware that based on the grant of certiorari in *Welch*, a panel of this court has elected to stay a pending application to file a successive § 2255 motion, reasoning that compliance with the statutory 30-day time limit for a decision is optional in such circumstances. See *In re Anthony Johnson*, No. 16-10011, ___ F.3d ___, 2016 WL 240362 (11th Cir. Jan. 20, 2016).

We decline to *sua sponte* stay the application in this case. First, *In re Anthony Johnson* sets out no requirement that future panels considering these applications grant a stay pending resolution of *Welch* by the Supreme Court. Indeed, a decision to grant a stay is an “exercise of judicial discretion.” See *In re Earl Barber*, No. 16-10107 at 33–34 (11th Cir. Feb. 10, 2016) (Marcus, J., dissenting) (quoting *Nken v. Holder*, 556 U.S. 418, 433 (2009)).

Second, the statute is clear in its requirement that a ruling on a request to file a successive motion be made within 30 days.

Third, our precedent in *Rivero* and *Franks* unambiguously forecloses Young’s application for leave to file this successive motion. That the Supreme Court has granted certiorari and could potentially issue a decision contrary to our precedent does not constitute a persuasive ground for a stay. See *Schwab v. Sec’y, Dep’t of Corr.*, 507 F.3d 1297, 1298–99 (11th Cir. 2007) (“grants of certiorari do not themselves change the law” nor do they “suggest a view on the merits.”) In fact, “[u]ntil the Supreme Court issues a decision that actually changes the law, we are duty-bound to apply this Court’s precedent and to use it and any existing decisions of the Supreme Court to measure the likelihood of a plaintiff’s success on the merits.” *Gissendaner v. Comm’r, Ga. Dep’t of Corr.*, 779 F.3d 1275, 1284 (11th Cir. 2015).

Fourth, denials of successive applications are without prejudice, meaning that our decision today does not preclude Young from later filing a successive application should a new avenue for relief become available via *Welch* or otherwise, albeit any such future filing would be subject to all applicable statutes of limitations and tolling provisions.

Finally, as noted above, Young has been a prodigious filer of petitions seeking to overturn his sentence as an armed career criminal. Certainly, he is well familiar with the facts and procedural history of his own case. Yet, because he has never even hinted that the now-void residual clause played any role in the district court's sentencing decision in 1994, it is unclear how *Johnson*, even if retroactively applied, would help him in his effort to undo his sentence.

Accordingly, for the above reasons, we decline to *sua sponte* stay this litigation and we **DENY** Young's application to file a successive § 2255 motion.

MARTIN, Circuit Judge, dissenting:

James Young has asked to file a second or successive 28 U.S.C. § 2255 petition for habeas relief based on Johnson v. United States, __ U.S. __, 135 S. Ct. 2551 (2015), which was decided on June 26, 2015. Although the Majority is right when it says this Court's precedent in In re Anthony Johnson, No. 16-10011 (11th Cir. Feb. 26, 2016), does not *require* us to stay Mr. Young's case, I would exercise the discretion that precedent provides to stay Mr. Young's case for at least three reasons.

First, Mr. Young has already spent over 21 years in prison for an 18 U.S.C. § 922(g)(1) offense. If his sentence had not been enhanced under the Armed Career Criminal Act (ACCA), the maximum sentence allowed by law for him would have been 10 years. The Supreme Court's Johnson case invalidated a provision of ACCA (the so-called residual clause) that has been relied upon for years to impose longer sentences on thousands of federal prisoners. We cannot know based on Mr. Young's pro se filings, and within the 30-day period set by 28 U.S.C. § 2244(b)(3)(D), whether Mr. Young is one of those people who was sentenced beyond the time allowed by law or not. But we do know that the Supreme Court is reviewing our Court's current rule which would deny Mr. Young relief. See Welch v. United States, 136 S. Ct. 790 (2016). Welch will determine whether prisoners sentenced under ACCA before the Supreme Court's Johnson

ruling will get the same benefit of that decision as prisoners whose sentences were not final before that ruling.

Second, the majority denies Mr. Young's application because they say he failed to allege that "the residual clause played any role in the district court's determination in 1994 that Young had sustained three prior predicate offenses." Maj. Op. at 4. However, there is nothing in the law that requires any District Judge to specify which words in an ACCA definition it relied upon in imposing a sentence. In fact, the so-called "enumerated offenses clause" and "residual clause" are not even separate sections of the statute. Rather, 18 U.S.C. § 924(e)(2)(B)(ii) generally defines "violent felony" as an offense that "is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another." (The first 9 words there are called the "enumerated offenses clause," and the last 13 are called the "residual clause.") Because the two clauses are in the same subsection of the statute, the only way to know which definition a defendant's prior conviction was counted under is to look to find out whether the judge uttered words like "the residual clause" or "the enumerated offenses clause" when imposing a § 924(e)(2)(B)(ii) sentence.

I don't think it matters for now whether Mr. Young's judge uttered the words "residual clause." No one disputes that his sentence was imposed under

ACCA. And Mr. Young argues that, thanks to Johnson, ACCA no longer requires his sentence. We could certainly speculate about whether the 1994 court would have sentenced Mr. Young under ACCA even if Johnson applied at the time. But that isn't the question here. The question is whether Johnson makes Mr. Young's sentence unlawful.

If Johnson means Mr. Young's prior offenses should not have counted toward a harsher sentence for his 922(g)(1) offense, then his ACCA sentence is void. That's why I don't think it matters that Mr. Young "has never even hinted that the now-void residual clause played any role in the district court's sentencing decision in 1994." Maj. Op. at 7. At least it should not matter at the § 2244(b) gatekeeper stage. At this stage, Mr. Young should not have to tell us precisely what (if anything) in his decades-old sentencing transcript or presentence investigation report (a document I understand Mr. Young is not likely to be allowed to possess for security reasons) indicated which words in § 924(e)(2)(B) were the basis for his sentence.

I believe it is enough for Mr. Young to assert that his sentence was extended based on prior offenses that no longer count under any of ACCA's definitions.¹ If

¹ Mr. Young has said more than this. His application spells out in impressive detail why his prior offenses don't count under any ACCA definition. See App. at 8–10. The majority is correct that despite the fact that "he is well familiar with the facts and procedural history of his own case" Maj. Op. at 7, Mr. Young has not specified which ACCA clause the District Court applied in sentencing him. But no matter how familiar Mr. Young is with the history of his case,

we decide this claim is based on a “new rule” that fits the § 2255(h)(1) criteria, the District Court can review its records, because a § 2255 petition must be filed in the applicant’s sentencing court. Then the court can hear from Mr. Young and the government and decide in the first instance whether Mr. Young’s sentence is now void because of Johnson. Our task now is narrower. Our task is merely to determine whether Mr. Young made a prima facie showing that his motion “contain[s]” the correct type of claim. 28 U.S.C. § 2255(h); see also id. § 2244(b); Jordan v. Sec’y, Dep’t of Corr., 485 F.3d 1351, 1357–58 (11th Cir. 2007) (noting that we typically rule on § 2244(b) applications “based only on the petitioner’s submission,” without “access to the whole record” or “hear[ing] from the government,” and within 30 days).²

Finally, 28 U.S.C. § 2255(f)(3) may limit Mr. Young to one year from the Johnson decision for making his claim that the Supreme Court ruling in Johnson

I think it unrealistic to expect a prisoner to remember the precise words his sentencing judge uttered over two decades ago, or to have kept an intact transcript of his sentencing all that time.

Also, this Court’s form for applications to file second or successive § 2255 motions only allows prisoners a few lines to explain their claims. See <http://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/Form2255APP.pdf>. The first page of the form says: “All questions must be answered concisely in the proper space on the form.” It also says: “Additional pages are not permitted except with respect to additional grounds for relief and facts which you rely upon to support those grounds. Do not submit separate petitions, motions, briefs, arguments, etc.” Given these restrictions, I am not sure how an applicant could show what words from an ACCA definition their judge used to count each of their convictions.

² The question of whether Mr. Young properly preserved his Johnson claim is one for the District Court. We have no idea if the government will argue that Mr. Young should have claimed over 20 years before the Supreme Court decided Johnson that the residual clause was unconstitutional. If the government raises this defense, Mr. Young should have, in my view, an opportunity to show cause and prejudice.

entitles him to relief. See Dodd v. United States, 545 U.S. 353, 358–59, 125 S. Ct. 2478, 2482–83 (2005). If it turns out that the Supreme Court decides Welch in such a way as to tell this Court we have wrongly decided the question of whether Johnson benefits prisoners sentenced before it was decided, I worry about depriving Mr. Young of the time he needs to reassert his claim after the Welch decision.

For each of these reasons, I would hold Mr. Young's case in abeyance to protect his ability to get relief if the Supreme Court decides the law entitles him to such relief. I respectfully dissent.

A P P E N D I X A-2

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-16096-J

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

OCT 19 2016

David J. Smith
Clerk

IN RE: JAMES YOUNG,

Petitioner.

Application for Leave to File a Second or Successive
Motion to Vacate, Set Aside,
or Correct Sentence, 28 U.S.C. § 2255(h)

Before: MARCUS, MARTIN, and JULIE CARNES, Circuit Judges.

BY THE PANEL:

Pursuant to 28 U.S.C. §§ 2255(h) and 2244(b)(3)(A), James Young has filed an application seeking an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his federal sentence, 28 U.S.C. § 2255. Such authorization may be granted only if this Court certifies that the second or successive motion contains a claim involving:

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h). “The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.” *Id.* § 2244(b)(3)(C); *see also*

Jordan v. Sec'y, Dep't of Corrs., 485 F.3d 1351, 1357-58 (11th Cir. 2007) (explaining that this Court's determination that an applicant has made a *prima facie* showing that the statutory criteria have been met is simply a threshold determination).

In his *pro se* application, Young indicates that he wishes to raise one claim in a second or successive § 2255 motion. Generally, he contends that he is being held unlawfully because the district court enhanced his sentence based on an improper application of the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e). Young relies upon *Johnson v. United States*, 135 S. Ct. 2551 (2015)—in which the Supreme Court held that the residual clause of the ACCA is unconstitutionally vague—and *Mathis v. United States*, 136 S. Ct. 2243 (2016), as providing the new rule of constitutional law supporting his claim. Thus, Young argues that his five prior burglary convictions no longer qualify as ACCA predicate offenses in light of *Johnson*.

After Young filed his successive application, he submitted a "motion request to the Eleventh Circuit Court of Appeals to Supplement the Record in Case No. 16-16096." In this motion, Young requests permission to submit various state court documents pertaining to his prior burglary convictions in support of his application. He asserts that these documents: (1) contradict this Court's previous characterization of his prior felony convictions; and (2) establish that his prior burglary convictions no longer qualify as ACCA predicate offenses. Accordingly, he attaches to his motion a case history provided by the Alachua County Clerk of Court, which indicates, *inter alia*, that Young was convicted: (1) in case number 1991 CF 000195, of burglary, in violation of Fla. Stat. § 810.02; (2) in case number 1991 CF 000495, of armed burglary, in violation of Fla. Stat. § 810.02(1); (3) in case number 1991 CF 000823, of burglary, in violation of Fla. Stat. § 810.02; (4) in case number 1991 CF 000824, of burglary, in violation of Fla. Stat.

§ 810.02; and (5) in case number 1991 CF 001830, of burglary of a dwelling, in violation of Fla. Stat § 810.02(2). Each of these convictions has a disposition date of July 9, 1991.

Young has filed four previous successive applications seeking leave to raise nearly identical *Johnson*-based challenges to his sentence. Young filed the most recent of these prior applications on June 27, 2016, arguing that his five prior convictions for Florida burglary no longer qualified as ACCA predicate offenses following *Johnson*. On August 8, 2016, we dismissed the application in an unpublished order. We explained that we were required to dismiss Young's application pursuant to 28 U.S.C. § 2241(b)(1) and *In re Baptiste*, 828 F.3d 1337 (11th Cir. 2016), because he raised the same *Johnson*-based challenge to his ACCA-enhanced sentence in his previous applications.

Under 28 U.S.C. § 2244(b)(1), "[a] claim presented in a second or successive habeas corpus application under [28 U.S.C.] section 2254 that was presented in a prior application shall be dismissed." 28 U.S.C. § 2244(b)(1). We have held that § 2244(b)(1)'s mandate applies to applications for leave to file a second or successive § 2255 motion. *In re Baptiste*, 828 F.3d at 1339-40 (11th Cir. 2016). We also have held that a prisoner may not file "what amounts to a motion for reconsideration under the guise of a separate and purportedly 'new' application" when the new application raises the same claim that was raised and rejected in the prior application. *Id.* at 1340. Finally, we have determined that denials of successive applications are with prejudice, and that § 2244(b)(1)'s prohibition against repeat successive application filings is a jurisdictional bar to our reconsideration of such repetitive claims. *In re Anderson*, No. 16-14125 (11th Cir. July 22, 2016); *see also In re Bradford*, No. 16-14512 (11th Cir. July 27, 2016). Thus, we reject Young's successive application because the claim in his instant application was raised and rejected

on the merits in a prior application. *See Baptiste*, 828 F.3d at 1339.

Additionally, in light of the foregoing, we deny Young's motion to supplement the record. In his motion, Young argues that his state court conviction records demonstrate that this Court erroneously denied his *Johnson*-based successive applications. However, because Young has filed four previous applications raising the same *Johnson*-based claim, § 2244(b)(1) serves as a jurisdictional bar to the instant application. *See In re Bradford*, No. 16-14512. Young cannot circumvent the holding of *In re Baptiste* by filing "what amounts to a motion for reconsideration" in the guise of a motion to supplement the record. *See In re Baptiste*, 828 F.3d at 1340.

Accordingly, Young's application for leave to file a second or successive motion to vacate is hereby DENIED. Young's request to supplement the record is also DENIED.

MARTIN, Circuit Judge, concurring in judgment:

The majority holds that Mr. Young's application is barred by In re Baptiste, 828 F.3d 1337 (11th Cir. 2016), which held that "the federal habeas statute requires us to dismiss a claim that has been presented in a prior application" to file a § 2255 motion. Id. at 1339. I have stated my views that Baptiste has no basis in the text of the habeas statute:

Baptiste was construing 28 U.S.C. § 2244(b)(1), which says any "claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." Of course, [] § 2255 motions . . . are filed by federal prisoners [and] § 2255 motions are certainly not brought "under section 2254," which governs petitions filed by state prisoners. But the Baptiste panel ruled that even though § 2244(b)(1) does not mention § 2255 motions, it applies to them anyway, since "it would be odd [] if Congress had intended to allow federal prisoners" to do something state prisoners can't do.

In re Clayton, 829 F.2d 1254, 1266 (11th Cir. 2016) (Martin, J., concurring). And

Baptiste is inconsistent with the statute in a second way. The text of the habeas statute shows that it requires courts to dismiss only claims that were already presented in an actual § 2255 motion, as opposed to a mere request for certification of a successive § 2255 motion. Both § 2244 and § 2254 distinguish between "applications" (which are the § 2254 petitions and § 2255 motions filed in district courts) and "motions" (which are the earlier request for certification filed in a court of appeals). Baptiste assumes that "motion" and "application" mean the same thing, even though Congress carefully distinguished the

two. When Congress uses different words in this way, courts must presume those words mean different things.

In re Anderson, 829 F.3d 1290, 1296 (11th Cir. 2016) (Martin, J., dissenting).

My colleagues have articulated other problems with Baptiste. See In re Jones, 830 F.3d 1295, 1297 (11th Cir. 2016) (Rosenbaum and Jill Pryor, J.J., concurring).

This application provides an example of the damage that Baptiste is capable of doing. Today is the fifth time we have denied Mr. Young permission to file a § 2255 motion. I wrote the first time that I believe Mr. Young's ACCA sentence is unlawful. See In re Young, 16-10429 (11th Cir. Mar. 1, 2016) (Martin, J., dissenting). Mr. Young's latest filing has not changed my mind.

First, it appears unlikely that Mr. Young's twelve prior convictions for grand theft could qualify as ACCA predicates now that the residual clause has been invalidated. That is because grand theft is not one of the enumerated crimes and the statute does not have as an element the use, attempted use, or threatened use of physical force against the person of another.

Second, with regard to Mr. Young's burglary convictions, the Supreme Court has made clear that "Florida's burglary statute differs from 'generic' burglary . . . because it defines a '[d]welling' to include not only the structure itself, but also the 'curtilage thereof.'" James v. United States, 550 U.S. 192, 212, 127 S. Ct. 1586, 1600 (2007). James held that this "inclusion of curtilage takes Florida's [] offense

of burglary outside the definition set forth in Taylor, which requires an unlawful entry into, or remaining in, ‘a building or other structure.’” Id. And this court has long recognized, “Florida does not consider burglary of the curtilage of a structure to be a crime distinct from burglary of that structure.” United States v. Matthews, 466 F.3d 1271, 1274 (11th Cir. 2006). As the Florida Supreme Court put it:

There is no crime denominated burglary of a curtilage; the curtilage is not a separate location wherein a burglary can occur. Rather, it is an integral part of the structure or dwelling that it surrounds. Entry into the curtilage is, for the purposes of the burglary statute, entry into the structure or dwelling.

Baker v. State, 636 So. 2d 1342, 1344 (Fla. 1994).

The United States Supreme Court has explained time and again that a state burglary crime is not “burglary” for purposes of ACCA if the elements of the state offense differ from the elements of generic burglary. See Mathis v. United States, ___ U.S. ___, ___, 136 S. Ct. 2243, 2255–56 (2016) (“Taylor set out the essential rule governing ACCA cases more than a quarter century ago. All that counts under the Act, we held then, are ‘the elements of the statute of conviction.’ . . . That simple point became a mantra in our subsequent ACCA decisions.”). And so, when “a state court decision definitively” confirms that a non-generic state burglary statute does not require entry into a dwelling as an “element” of the offense (as the Florida Supreme Court’s Baker decision does), “ACCA disregards the means by which the

defendant committed his crime.” Id. at 2251.

At the very least, it is unclear whether Mr. Young’s prior convictions for Florida burglary qualify as violent felonies after Johnson. See United States v. Lockett, 810 F.3d 1262, 1265 n.1 (11th Cir. 2016) (noting that this court has not decided whether Florida burglary is divisible); see also Adams, 825 F.3d at 1285–86 (granting the applicant leave to file a successive § 2255 motion because it was unlikely that his Florida burglary conviction could serve as a predicate offense under ACCA’s enumerated offenses clause). Mr. Young has therefore made the required prima facie showing to warrant a second § 2255 petition. In fact, he has done so in four earlier applications as well. But because we made a mistake in denying Mr. Young’s first application, Baptiste prevents us from even considering his application today. This means that as a court, we compound our mistake in wrongly denying Mr. Young’s application with an even bigger one that prohibits us from correcting our mistakes when we inevitably make them.

Baptiste is nevertheless binding precedent in this Circuit, so Mr. Young will not be allowed to present his case to a District Court for an examination of whether his sentence is legal. Mr. Young will thus continue to serve what might be an unlawful sentence because of our mistake.

I hope there is another way for Mr. Young to find relief.

**Additional material
from this filing is
available in the
Clerk's Office.**