

APPENDIX

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Decision of the Court of Appeals for the Eleventh Circuit, <i>United States v. Ralph Martin</i> , 17-11322 (December 14, 2017)	A-1
Judgment imposing sentence.....	A-2

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-11322
Non-Argument Calendar

D.C. Docket No. 1:16-cr-20554-BB-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RALPH PATRICK MARTIN,

Defendant-Appellant.

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

(December 14, 2017)

Before MARTIN, JILL PRYOR, and FAY, Circuit Judges.

PER CURIAM:

Ralph Martin appeals his 180-month sentence imposed under the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e).

I.

On December 9, 2016, Martin pled guilty to one count of being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g). The probation office prepared a presentence investigation report (“PSR”) that designated Martin as an armed career criminal under the ACCA. The PSR identified three prior felony convictions that served as ACCA predicate offenses: (1) possession with intent to sell or deliver cocaine within 1,000 feet of a school in violation of Fla. Stat. § 893.13(1)(c); (2) possession with intent to sell or deliver cocaine in violation of Fla. Stat. § 893.13(1)(a); and (3) resisting a police officer with violence in violation of Fla. Stat. § 843.01.

Martin objected to the PSR, arguing that his drug convictions did not qualify as “serious drug offenses” under 18 U.S.C. § 924(e)(2)(A) and that his conviction for resisting an officer with violence did not qualify as a “violent felony” under 18 U.S.C. § 924(e)(2)(B)(i). He also argued it would be unconstitutional for the district court to enhance his sentence based on prior convictions that were neither alleged in the indictment nor admitted to in his plea.

At a sentence hearing on March 14, 2017, the district court overruled Martin’s objections, adopted the findings of the PSR, and determined that Martin qualified as an armed career criminal. Martin was sentenced to 180-months imprisonment.

Martin now appeals, raising the same arguments he raised in the district court that his prior felony convictions do not qualify as ACCA predicate offenses and that his sentence was unconstitutionally enhanced based on prior convictions not alleged in the indictment or admitted to in his plea. Martin acknowledges that his arguments are foreclosed by binding precedent from this Court and the United States Supreme Court. He nonetheless presents these arguments to preserve them for further appeal, and we will consider them in turn.

II.

We review de novo whether a prior conviction is a predicate offense within the meaning of the ACCA. United States v. Robinson, 583 F.3d 1292, 1294 (11th Cir. 2009) (per curiam). We also review de novo constitutional challenges to a sentence. United States v. Paz, 405 F.3d 946, 948 (11th Cir. 2005) (per curiam). “Under the prior precedent rule, we are bound to follow a prior binding precedent unless and until it is overruled by this court en banc or by the Supreme Court.” United States v. Vega-Castillo, 540 F.3d 1235, 1236 (11th Cir. 2008) (per curiam) (quotation omitted).

III.

Under the ACCA, a defendant convicted of violating 18 U.S.C. § 922(g) is subject to a mandatory minimum 15-year prison sentence if he has three prior convictions for a serious drug offense or a violent felony. 18 U.S.C. § 924(e)(1).

A “serious drug offense” is defined, in relevant part, as “an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance . . . for which a maximum term of imprisonment of ten years or more is prescribed by law.” Id. § 924(e)(2)(A)(ii). In determining whether a conviction qualifies as an ACCA predicate offense, courts generally apply a categorical approach, looking no further than the fact of conviction and the statutory definition of the prior offense. See United States v. Estrella, 758 F.3d 1239, 1244–45 (11th Cir. 2014).

Florida law punishes the sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver cocaine as a second-degree felony. See Fla. Stat. §§ 893.03(2)(a), 893.13(1)(a)(1). Second-degree felonies are punishable by up to 15-years imprisonment. Id. § 775.082(3)(d). In United States v. Smith, 775 F.3d 1262 (11th Cir. 2014), we held that a violation of Fla. Stat. § 893.13(1) is a serious drug offense under the ACCA. Id. at 1267–68.

The district court did not err in categorizing Martin’s drug convictions as ACCA predicate offenses because, pursuant to our holding in Smith, his two Florida convictions for possession with intent to sell cocaine qualify as serious drug offenses under the ACCA, see Smith, 775 F.3d at 1267–68, and we are bound by that decision, Vega-Castillo, 540 F.3d at 1236.

IV.

The elements clause of the ACCA defines a “violent felony” as “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.” 18 U.S.C. § 924(e)(2)(B)(i). Under Florida law it is a third-degree felony to resist, obstruct, or oppose any law enforcement officer “by offering or doing violence to the person of such officer.” Fla. Stat. § 843.01. Third-degree felonies are punishable by up to 5-years imprisonment. Id. § 775.082(3)(e).

In United States v. Hill, 799 F.3d 1318 (11th Cir. 2015) (per curiam), this Court held that a prior Florida conviction for resisting an officer with violence categorically qualifies as a violent felony under the elements clause of the ACCA. Id. at 1322–23; see also United States v. Romo-Villalobos, 674 F.3d 1246, 1251 (11th Cir. 2012) (per curiam) (“[A] conviction under Florida Statute § 843.01 is sufficient for liability under the first prong of the ACCA.” (quotation omitted)).

Martin’s argument as to this predicate offense is foreclosed by our holding in Hill. The district court did not err in concluding that Martin’s conviction under Fla. Stat. § 843.01 qualified as a violent felony for the purpose of sentencing him under the ACCA.

V.

Facts that increase a mandatory minimum sentence must be submitted to a jury and proven beyond a reasonable doubt. Alleyne v. United States, 570 U.S. 99, ___, 133 S. Ct. 2151, 2162–63 (2013). The fact of a prior conviction, however, is not an “element” of the crime that must be submitted to the jury. Almendarez-Torres v. United States, 523 U.S. 224, 226–27, 118 S. Ct. 1219, 1222 (1998). While there may be “some tension between Almendarez-Torres . . . and Alleyne,” we have previously stated that “we are bound to follow Almendarez-Torres unless and until the Supreme Court itself overrules that decision.” United States v. Harris, 741 F.3d 1245, 1250 (11th Cir. 2014) (quotation omitted).

In light of the rule expressed in Almendarez-Torres, the district court was correct to apply the ACCA enhancement to Martin’s sentence based on prior convictions not charged in the indictment nor proven to a jury beyond a reasonable doubt. See Almendarez-Torres, 523 U.S. at 226–27, 118 S. Ct. at 1222.

AFFIRMED.

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UNITED STATES DISTRICT COURT

Southern District of Florida

Miami Division

UNITED STATES OF AMERICA

v.

RALPH PATRICK MARTIN

JUDGMENT IN A CRIMINAL CASE

Case Number: 16-CR-20554-BB

USM Number: 13869-104

Counsel For Defendant: Daryl Wilcox

Counsel For The United States: Mackenzie Duane

Court Reporter: Yvette Hernandez

The defendant pleaded guilty to count Two (2).

The defendant is adjudicated guilty of these offenses:

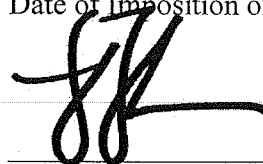
<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 USC 922	Possession of a Firearm and Ammunition by a Convicted Felon	08/19/2016	Two (2)

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

All remaining counts are dismissed on the motion of the government.

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 material changes in economic circumstances.

Date of Imposition of Sentence: 3/14/2017



Beth Bloom

United States District Judge

Date: March 15, 2017

DEFENDANT: **RALPH PATRICK MARTIN**

CASE NUMBER: **16-CR-20554-BB**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **180 months**.

The court makes the following recommendations to the Bureau of Prisons: The defendant be enrolled in the 500 hours RDAP Program and be housed in a facility in South Florida.

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

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

DEFENDANT: RALPH PATRICK MARTIN

CASE NUMBER: 16-CR-20554-BB

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **3 years**.

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 defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

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 with 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 and shall submit a truthful and complete written report within the first fifteen days of each month;
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 of 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: **RALPH PATRICK MARTIN**
CASE NUMBER: **16-CR-20554-BB**

SPECIAL CONDITIONS OF SUPERVISION

Mental Health Treatment - The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Permissible Search - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Substance Abuse Treatment - The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

DEFENDANT: **RALPH PATRICK MARTIN**

CASE NUMBER: **16-CR-20554-BB**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00

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>
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* 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.

**Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: RALPH PATRICK MARTIN

CASE NUMBER: 16-CR-20554-BB

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 due immediately.

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 the court.

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

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE

ATTN: FINANCIAL SECTION

400 NORTH MIAMI AVENUE, ROOM 08N09

MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

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

<u>CASE NUMBER</u>	<u>TOTAL AMOUNT</u>	<u>JOINT AND SEVERAL</u>
<u>DEFENDANT AND CO-DEFENDANT NAMES</u>		<u>AMOUNT</u>
<u>(INCLUDING DEFENDANT NUMBER)</u>		

The Government shall file a preliminary order of forfeiture within 3 days.

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.