

Appendix A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-12951-D

ALFRED LEWIS PATTERSON, JR.,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

ORDER:

Alfred Lewis Patterson is a federal prisoner serving a 192-month sentence, imposed after he pled guilty to possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). In 2014, Patterson filed a *pro se* 28 U.S.C. § 2255 motion to vacate, asserting that his sentence under the Armed Career Criminal Act (“ACCA”) was unlawful in light of *Descamps v. United States*, 133 S. Ct. 2276 (2013). In 2015, Patterson filed an amended § 2255 motion asserting that his sentencing was unconstitutional in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015) (“*Samuel Johnson*”). After he was appointed counsel, Patterson again amended his complaint. He conceded that his drug conviction and his conviction for resisting arrest with violence qualified as predicate offenses, but he argued that his Florida convictions for throwing a missile and felony battery under Fla. Stat. Ann. § 784.03(2), no longer qualified as violent felonies.

A magistrate judge issued a report and recommendation (“R&R”), recommending that the district court deny Patterson’s § 2255 motion, and, over Patterson’s objections, the district court adopted the R&R, denied the § 2255 motion, and denied a COA.

Patterson has now moved this Court for a COA, arguing that the Florida felony-battery statute is indivisible and, alternatively, the *Shepard*¹ documents did not support a finding that his specific battery conviction included an element of “violent felony force.” Patterson recognizes that this Court has held that the Florida battery statute is divisible, but maintains that the case was incorrectly decided.

In order to obtain a COA, a movant must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The movant satisfies this requirement by demonstrating that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong,” or that the issues “deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotations omitted).

Patterson concedes that his prior drug conviction and his conviction for resisting arrest with violence qualify as predicate offenses. Thus, he only needs one other predicate offense to qualify as an armed career criminal. Patterson’s conviction for felony battery qualifies as a predicate offense under the elements clause. In Florida, the state can prove battery in one of three ways: (1) intentionally causing bodily harm; (2) intentionally striking the victim; or (3) actually and intentionally touching the victim. *Johnson v. United States*, 559 U.S. 133, 137 (2010). In *United States v. Green*, this Court held that the Florida battery statute is divisible, and, thus, applied the modified categorical approach to determine that the defendant’s prior conviction qualified as a predicate offense because the *Shepard* documents showed that he was

¹ *Shepard v. United States*, 544 U.S. 13 (2005).

convicted under the striking element of the statute. 842 F.3d 1299, 1322-23 (11th Cir. 2016). Patterson's plea agreement incorporated the arrest report as its factual findings and indicated that Patterson punched the victim in the face. *See id.* at 1323. Because the *Shepard* documents show that Patterson was convicted under the striking element of Florida battery, his prior conviction qualified as a predicate offense under the elements clause. *See id.* at 1324.

Because Patterson has three offenses that still qualify as ACCA predicate offenses, he cannot make a substantial showing of the denial of a constitutional right. Accordingly his motion for a COA is DENIED.

/s/ Adalberto Jordan
UNITED STATES CIRCUIT JUDGE