
NO: 17-8401

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

JIMMY LEE FRANKLIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

REPLY TO MEMORANDUM FOR THE UNITED STATES

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REPLY TO MEMORANDUM OF THE UNITED STATES

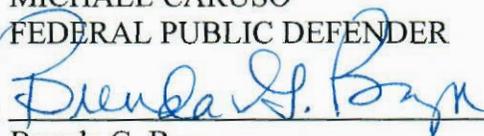
In its July 6, 2018 response to Mr. Franklin's petition for certiorari, the government conceded that the "touch or strike" language in Florida's battery statute is indivisible; that "touching" and "striking" refer to alternative ways to commit a single offense, not alternative elements;" and since Mr. Franklin's battery on a law enforcement officer (BOLEO) offense therefore "does not categorically require the use of violence force," his BOLEO conviction "does not qualify as a violent felony under the ACCA's elements clause." Memorandum of United States at 5. As such, the government has suggested that "the appropriate course" is to GVR this case. And "[b]ecause vacatur and remand is warranted on the question of whether [Mr. Franklin's BOLEO conviction] is a violent felony," in the government's view "no reason exists to hold this petition for *Stokeling*." Id. at 5-6 & n.2.

Mr. Franklin agrees. As of this writing, he has greatly overserved the statutory maximum term of 10 years imprisonment on a non-ACCA sentence, and is close to completing the 180 month ACCA sentence erroneously imposed by the district court.¹ In order that he might derive some benefit from the government's case-dispositive concession of error, Mr. Franklin asks that the decision below be vacated and his case be remanded to the court of appeals forthwith.

Respectfully submitted,

MICHAEL CARUSO
FEDERAL PUBLIC DEFENDER

By:


Brenda G. Bryn
Assistant Federal Public Defender
Counsel of Record for Petitioner

Fort Lauderdale, Florida
November 13, 2018

¹ On May 16, 2006, Mr. Franklin was arrested by state authorities and taken into state custody. On November 16, 2006 (while in state custody), he was charged federally. On February 1, 2007, he was arrested by federal authorities, and taken into federal custody. On August 8, 2007, he pled guilty, and on October 16, 2007, he was sentenced. Although his current BOP release date is December 26, 2019, it is expected that he will be released to a halfway house June 27, 2019.