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**IN THE UNITED STATES SUPREME COURT**

**\_\_\_\_\_ TERM**

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**UNITED STATES OF AMERICA,**

**Respondent,**

**V.**

**DANETRIUS TOLLIVER**

**Petitioner**

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**APPENDIX**

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*United States of America v. Danetrius Tolliver*  
District Court No. 1:16-CR-42-, March 6, 2017

**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION**

File Name: 18a0035n.06

No. 17-5298

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

**FILED**  
Jan 19, 2018  
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DANETRIUS J. TOLLIVER,

Defendant-Appellant.

)  
)  
)  
) ON APPEAL FROM THE UNITED  
) STATES DISTRICT COURT FOR  
) THE EASTERN DISTRICT OF  
) TENNESSEE  
)  
)

BEFORE: MERRITT, GRIFFIN, and DONALD, Circuit Judges.

PER CURIAM. Danetrius J. Tolliver appeals his 180-month sentence under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e). As set forth below, we affirm.

Tolliver pleaded guilty to being a felon in possession of a firearm and ammunition in violation of 18 U.S.C. § 922(g)(1). Tolliver's presentence report classified him as an armed career criminal under the ACCA based on his five prior Tennessee convictions for burglary of a business. Tolliver objected to his classification as an armed career criminal, asserting that his burglary convictions do not qualify as predicate offenses under the ACCA, and moved to continue his sentencing pending this court's en banc decision in *United States v. Stitt*, No. 14-6158. The district court overruled Tolliver's objection based on this court's decision in *United States v. Priddy*, 808 F.3d 676, 684-85 (6th Cir. 2015), holding that Class D burglary convictions in violation of Tennessee Code Annotated § 39-14-402(a)(1)-(3) are predicate offenses under the ACCA. The district court sentenced Tolliver to the ACCA's minimum term of 180 months of imprisonment.

No. 17-5298, *United States v. Tolliver*

In this timely appeal, Tolliver challenges his sentence under the ACCA, arguing that his prior Tennessee convictions for burglary do not qualify as predicate offenses. We review de novo whether a prior conviction qualifies as a predicate offense under the ACCA. *United States v. Mitchell*, 743 F.3d 1054, 1058 (6th Cir. 2014).

The ACCA requires a 15-year minimum sentence for a defendant convicted under 18 U.S.C. § 922(g) who has “three previous convictions . . . for a violent felony or a serious drug offense, or both.” 18 U.S.C. § 924(e)(1). The ACCA enumerates burglary as a “violent felony.” 18 U.S.C. § 924(e)(2)(B)(ii). For purposes of the ACCA, a defendant has been convicted of burglary if the defendant has been “convicted of any crime, regardless of its exact definition or label, having the basic elements of unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime.” *Taylor v. United States*, 495 U.S. 575, 599 (1990). To determine whether a prior conviction constitutes burglary under the ACCA, courts apply the categorical approach, “focus[ing] solely on whether the elements of the crime of conviction sufficiently match the elements of generic burglary, while ignoring the particular facts of the case.” *Mathis v. United States*, 136 S. Ct. 2243, 2248 (2016).

As the district court correctly determined, our decision in *Priddy* controls whether Tolliver’s five prior Tennessee Class D burglary convictions qualify as predicate offenses under the ACCA. Tennessee’s burglary statute provides:

(a) A person commits burglary who, without the effective consent of the property owner:

- (1) Enters a building other than a habitation (or any portion thereof) not open to the public, with intent to commit a felony, theft or assault;
- (2) Remains concealed, with the intent to commit a felony, theft or assault, in a building;
- (3) Enters a building and commits or attempts to commit a felony, theft or assault; or

No. 17-5298, *United States v. Tolliver*

(4) Enters any freight or passenger car, automobile, truck, trailer, boat, airplane or other motor vehicle with intent to commit a felony, theft or assault or commits or attempts to commit a felony, theft or assault.

....

(c) Burglary under subdivision (a)(1), (2) or (3) is a Class D felony.

(d) Burglary under subdivision (a)(4) is a Class E felony.

Tenn. Code Ann. § 39-14-402. In *Priddy*, this court held that each of the three variants of Class D burglary fits within the generic definition of burglary and therefore qualifies as a violent felony under the ACCA. 808 F.3d at 684-85. The judgments in all five of Tolliver's burglary cases show that he was convicted of Class D burglary. Accordingly, the district court properly sentenced Tolliver as an armed career criminal based on his prior burglary convictions.

Citing our en banc decision in *United States v. Stitt*, 860 F.3d 854 (6th Cir. 2017) (en banc), Tolliver argues that Tennessee's burglary statute is broader than generic burglary under the categorical approach and therefore does not qualify as a violent felony under the ACCA. The *Stitt* case involved Tennessee aggravated burglary—"burglary of a habitation," Tenn. Code Ann. § 39-14-403. This court concluded that "Tennessee's aggravated-burglary statute sweeps more broadly than generic burglary" because the statutory definition of "habitation" includes vehicles and movable enclosures. *Stitt*, 860 F.3d at 860-61. In contrast, Class D burglary under Tennessee law is limited to buildings. Tenn. Code Ann. § 39-14-402(a)(1)-(3). This court has recognized that "[n]othing in *Stitt* . . . undermined *Priddy*'s holding on burglary" and that "*Priddy*'s burglary analysis remains controlling." *United States v. Ferguson*, 868 F.3d 514, 516 (6th Cir. 2017). And this panel may not overrule *Priddy*. See *id.* at 515 ("One panel of this court may not overrule the decision of another panel; only the en banc court or the United States Supreme Court may overrule the prior panel.").

Based on the foregoing, we **AFFIRM** Tolliver's sentence under the ACCA.

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt  
Clerk

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Filed: January 19, 2018

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Re: Case No. 17-5298, *USA v. Danetrius Tolliver*  
Originating Case No. : 1:16-cr-00042-1

Dear Counsel,

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Michelle M. Davis  
Case Manager  
Direct Dial No. 513-564-7025

cc: Ms. Debra Poplin

Enclosure

Mandate to issue

# United States District Court

## Eastern District of Tennessee

UNITED STATES OF AMERICA  
v.  
DANETRIUS J TOLLIVER  
A.K.A. MAC DJ

### JUDGMENT IN A CRIMINAL CASE (For Offenses committed on or after November 1, 1987)

Case Number: 1:16-cr-00042-001-HSM-SKL  
John Brooks  
Defendant's Attorney

#### THE DEFENDANT:

- ☒ pleaded guilty to count(s): One of the Indictment  
☐ pleaded nolo contendere to count(s) which was accepted by the court.  
☐ was found guilty on count(s) after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

| Title & Section                              | Nature of Offense                                                         | Date Violation<br>Concluded | Count |
|----------------------------------------------|---------------------------------------------------------------------------|-----------------------------|-------|
| 18 U.S.C. § 922(g)(1), 18 U.S.C. § 924(e)(1) | Felon in Possession of a Firearm and Ammunition,<br>Armed Career Criminal | January 16, 2016            | One   |

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and 18 U.S.C. 3553.

- ☐ The defendant has been found not guilty on count(s).  
☐ All remaining counts as to this defendant in this case are dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall 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 shall notify the court and the United States attorney of any material change in the defendant's economic circumstances.

March 6, 2017  
Date of Imposition of Judgment

/s/ Harry S. Mattice, Jr.  
Signature of Judicial Officer

Harry S. Mattice, Jr., United States District Judge  
Name & Title of Judicial Officer

3/7/2017  
Date

DEFENDANT: Danetrius J Tolliver  
A.K.A. Mac Dj  
CASE NUMBER: 1:16-cr-00042-001-HSM-SKL

### 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 court recommends that the defendant receive 500 hours of substance **abuse treatment from** the BOP Institution Residential Drug Abuse Treatment Program.
- ☒ 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: Danetrius J Tolliver  
A.K.A. Mac Dj  
CASE NUMBER: 1:16-cr-00042-001-HSM-SKL

### SUPERVISED RELEASE

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

The defendant shall 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 illegally 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 register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district or other specified geographic area 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/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 narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;**
8. The defendant shall not frequent places where controlled substances are **illegally sold, used, distributed, or administered, or other places specified by the Court;**
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 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 72 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;
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by his/her criminal record or personal history of characteristics and shall permit the probation officer to make such notification and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Danetrius J Tolliver  
A.K.A. Mac Dj  
CASE NUMBER: 1:16-cr-00042-001-HSM-SKL

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall participate in a program of testing and treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.
2. The defendant shall submit his or her person, property, house, residence, vehicle, papers, [computers (as defined in Title 18 U.S.C. § 1030(e)(1), other electronic communications or data storage devices or media,) or office, to a search conducted by a United States probation officer or designee. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his/her supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: Danetrius J Tolliver  
A.K.A. Mac Dj  
CASE NUMBER: 1:16-cr-00042-001-HSM-SKL

### CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 6. The assessment is ordered in accordance with 18 U.S.C. 3013.

|         | Assessment | Fine | Restitution |
|---------|------------|------|-------------|
|         |            | \$   | \$          |
| Totals: | \$ 100.00  |      |             |

☐ The determination of restitution is deferred until \_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amounts 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, if the United States is a victim, all other victims, if any, shall receive full restitution before the United States receives any restitution, and all restitution shall be paid to the victims before any restitution is paid to a provider of compensation, pursuant to 18 U.S.C. 3664.

| Name of Payee | *Total<br>Amount of Loss | Amount of<br>Restitution Ordered | Priority Order or Percentage of Payment |
|---------------|--------------------------|----------------------------------|-----------------------------------------|
| TOTALS:       | \$__                     | \$__                             |                                         |

☐ If applicable, restitution amount ordered pursuant to plea agreement \$\_\_

☐ The defendant shall pay interest on any fine or restitution of more than \$2500, unless the fine or restitution 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 6 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 and/or ☐ restitution.

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

DEFENDANT: Danetrius J Tolliver  
A.K.A. Mac Dj  
CASE NUMBER: 1:16-cr-00042-001-HSM-SKL

## 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, balance due  
☐ not later than , or  
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, ☐ F below); or
- C ☐ Payment in equal \_\_ installments of \$\_\_ over a period of \_\_, to commence \_\_ after the date of this judgment; or
- D ☐ Payment in equal \_\_ installments of \$\_\_ over a period of \_\_, to commence \_\_ after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_ after release from imprisonment. The court will set the payment plan based on as assessment of the defendant's ability to pay at the time; or
- F ☒ Special instruction regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if the judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. Unless otherwise directed by the court, the probation officer, or the United States attorney, all criminal monetary penalties except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, shall be made to **U.S. District Court, 900 Georgia Avenue, Suite 309, Chattanooga, TN 37402**. Payments shall be in the form of a check or a money order, made payable to U.S. District Court, with a notation of the case number including defendant number.

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:

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.