2017 WL 4842617
Only the Westlaw citation is currently available.
United States Court of Appeals,
Seventh Circuit.

Joseph VAN SACH, Petitioner–Appellant,
v.
UNITED STATES of America,
Respondent–Appellee.

No. 17–1824
|
Submitted August 1, 2017
|
Decided September 1, 2017

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 16 C 05530, Rubén Castillo, *Chief Judge*

Attorneys and Law Firms

Carol A. Brook, William H. Theis, Office of the Federal Defender Program, Chicago, IL, for Petitioner–Appellant.

Debra Riggs Bonamici, Office of the United States Attorney, Chicago, IL, for Respondent–Appellee.

Before William J. Bauer, Circuit Judge, Joel M. Flaum, Circuit Judge, Kenneth F. Ripple, Circuit Judge

ORDER

***1** In this appeal from the denial of his motion for post-conviction relief under 28 U.S.C. § 2255, Joseph Van Sach claims that none of his three Illinois convictions—one for armed robbery and two for aggravated battery to a police officer—can be characterized as a violent felony under the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e). The district court disagreed, and so do we.

Both Van Sach and the government agree that the three Illinois convictions—which were used to enhance the penalty for Van Sach's federal firearm conviction—must be analyzed under the elements clause of the ACCA to count as predicate offenses. *See Johnson v. United States*, 135 S.Ct. 2551 (2015) (invalidating only the "residual clause" of the ACCA). So, we look at these convictions under that microscope.

No one disputes that Illinois' robbery statute provides only one way in which a person can commit the crime of robbery, requiring that we look solely to the text of the statute—a categorical approach. *See Mathis v. United States*, 136 S.Ct. 2243, 2248 (2016). In other words, the actual facts of the individual conviction are irrelevant. (We note that Van Sach's conviction was for "armed" robbery—simple robbery plus carrying a dangerous weapon or firearm during its commission. But the government makes nothing of this fact, and accordingly nor do we. *Cf. United States v. Parnell*, 818 F.3d 974, 982 (9th Cir. 2016)("The notion ... that *armed* robbery doesn't qualify as a violent felony seems ... absurd.") (emphasis in original) (Watford, J., concurring).)

We have held that convictions under Illinois' robbery statute are crimes of violence under the elements clause of 18 U.S.C. § 924(e). *United States v. Dickerson*, 901 F.2d 579, 584 (7th Cir. 1990). Van Sach, however, cautions the court's lockstep reliance on *Dickerson* based on the Supreme Court's ruling in *Johnson v. United States*, 559 U.S. 133 (2010). In *Johnson*, the Court made clear that not all convictions involving some level of force qualify as a "crime of violence" under the ACCA. *Dickerson* preceded *Johnson*, Van Sach notes, and therefore, under *Johnson*, requires that a court consider not only the statute's language but also the level of force Illinois courts require to sustain a conviction under the robbery statute. The threshold that the Court drew in *Johnson*, however, " 'is not a high one.' " United States v. Enoch, No. 16–1546, slip op. at 13–14 (7th Cir. July 28, 2017), quoting *United States v. Duncan*, 833 F.3d 751, 754 (7th Cir. 2016).

A recent examination of a sampling of Illinois cases convinced us that a conviction under Illinois' robbery statute requires force sufficient to qualify under *Johnson*. In *United States v. Chagoya–Morales*, 859 F.3d 411, 422 (7th Cir. 2017), we noted that "Illinois courts had eliminated [from Illinois' robbery statute], for example, takings without any sensible or material violence to the person, as snatching a hat from the head or a cane or umbrella from the hand." (Internal quotation marks and citations omitted.) Importantly, the court explicitly pointed out that the crime's aggravating factor— *i.e.*, a defendant who indicates verbally or by his actions to the victim that he is presently armed with a firearm—"serves as an *additional* reason to conclude that Mr. Chagoya–Morales's predicate offense required more force than the threshold described in *Johnson I*. *Id.* (Emphasis added.) Although *Chagoya–Morales* dealt with the career

offender provision of the Guidelines, not the ACCA, we treat cases interpreting the "crime of violence" provisions interchangeably. *Id.* at 421. We see no reason to reconsider the conclusion reached in *Chagoya–Morales*.

***2** Illinois' battery statute, unlike its robbery statute, does not set out a single, indivisible set of elements—one part of the battery statute contains a bodily harm element while a second part of the statute involves physical contact that is merely insulting or provoking. Because there is more than one way to commit a battery, it must first be determined what form of battery Van Sach committed—a modified categorical approach. *See Mathis v. United States*, 136 S.Ct. at 2249. But we need not linger here. Van Sach's two aggravated battery convictions—the offenses were "aggravated" because they were committed against known peace officers—were based on the bodily harm provision of the statute. The parties both concede as much.

We already have concluded that the phrase "causes bodily harm" in the state's battery statute means force that would satisfy *Johnson*'s requirement of violent physical force, *Hill v. Werlinger*, 695 F.3d 644, 649 (7th Cir. 2012); *United States v. Rodriquez–Gomez*, 608 F.3d 969, 973–74 (7th Cir. 2010), a holding that we reaffirmed earlier this year. *United States v. Lynn*, 851 F.3d 786. 799 (7th Cir. 2017). We require a compelling reason to overturn circuit precedent, United States v. Jackson, No. 15–3693, slip op. at 12 (7th Cir. Aug. 4, 2017), especially one so recent as *Lynn*, and Van Sach has not persuaded us of any legal development that would justify overturning these decisions.

AFFIRMED.

All Citations

Not Reported in F.3d, 2017 WL 4842617