

## **03-9168 SHEPARD V. UNITED STATES**

DECISION BELOW: 348 F3d 308

LOWER COURT CASE NUMBER: 02-1216

### **QUESTION PRESENTED:**

The Armed Career Criminal Act [18 U.S.C. §924(e)] imposes a mandatory minimum sentence of 15 years imprisonment for a person convicted of being a felon in possession of a firearm [18 U.S.C. § 922(g)] where that person has previously been convicted of three violent felonies or serious drug offenses or both. United States v. Taylor, 495 U.S. 575 (1990) held that Congress intended a sentencing court to employ a categorical approach to determine whether a defendant's prior convictions qualify as predicates for this sentence enhancement, looking only to the fact of conviction and the elements of the statute of conviction, or to the charging document and the jury instructions to determine whether all of the elements of generic burglary (an enumerated violent felony) were necessarily adjudicated in the state court. The questions presented are:

1. Whether, where the defendant has pleaded guilty to a nongeneric charge of burglary brought under a nongeneric statute, there is no contemporaneous record of the guilty plea proceedings and the judgment of conviction reflects a general finding of guilty, the sentencing court is still bound by Taylor's categorical method of application or may instead be required to conduct an inquiry - including an evidentiary hearing - into the facts underlying the conviction, to determine whether, in the guilty plea proceeding, both the defendant and the government believed that generic burglary was at issue?
2. If so, whether the sentencing court may be required to consider a version of these underlying facts found in any document in the court file such as an investigative police report or a complaint application and, if the facts alleged in the document are not challenged by the defendant, regard them as sufficiently reliable evidence that the defendant was convicted of a crime including all of the elements of generic burglary to support an Armed Career Criminal Act enhancement?

CERT. GRANTED 6/21/2004