

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

United States v. Whindleton

797 F.3d 105 (1st Cir. 2015) · No. 14-1932 · Decided August 10, 2015

SUMMARY

The First Circuit affirmed Jermaine Whindleton’s fifteen-year sentence under the Armed Career Criminal Act for being a felon in possession of a firearm. The court held that his New York conviction for criminal sale of a controlled substance qualified as a serious drug offense and that his Massachusetts conviction for assault with a dangerous weapon qualified as a violent felony under the ACCA’s force clause.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Lynch, Circuit Judge; Lynch; Thompson; Kayatta
JURISDICTION	Federal
DECIDED	August 10, 2015
DOCKET	14-1932
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed his fifteen-year sentence for being a felon in possession of a firearm, arguing that two prior convictions did not qualify as predicate offenses under the Armed Career Criminal Act.
STANDARD OF REVIEW	Whether a prior conviction qualifies as an ACCA predicate offense is reviewed de novo.
PRECEDENTIAL VALUE	Published and precedential First Circuit opinion
PARTIES	Jermaine Whindleton v. United States of America

TOPICS

- sentencing
- criminal procedure
- statutory interpretation
- standard of review
- appellate procedure

PRACTICE AREAS

- Federal criminal law
- Sentencing
- Armed Career Criminal Act
- Criminal procedure
- Appellate review

QUESTIONS PRESENTED

1. Whether a conviction under New York Penal Law § 220.39(1) for criminal sale of a controlled substance qualifies as a serious drug offense under the ACCA when the statute permits conviction based on an offer to sell.
2. Whether a conviction under Massachusetts General Laws chapter 265, § 15B(b), for assault with a dangerous weapon qualifies as a violent felony under the ACCA's Force Clause.

HOLDINGS

1. A conviction under New York Penal Law § 220.39(1) qualifies as an ACCA serious drug offense because an offer to sell a controlled substance, when made with the intent and ability to proceed with the sale, is sufficiently related to or connected with drug distribution to fall within the ACCA's definition of an offense 'involving' distribution.
2. A conviction for Massachusetts assault with a dangerous weapon under Massachusetts General Laws chapter 265, § 15B(b), qualifies as a violent felony under the ACCA's Force Clause because the dangerous-weapon element imports the use, attempted use, or threatened use of violent force capable of causing physical pain or injury.

KEY QUOTATIONS

“We hold today only that an offer to sell under New York law -- requiring the intent and the ability to proceed with a sale -- sufficiently “involv[es]” the distribution of drugs to qualify as a “serious drug offense” under the ACCA.” (slip op. at 11-12)

*“For these reasons, we conclude that Johnson does not overrule our holding in *Am* that the Massachusetts statute for ADW, “which criminalizes ‘an assault upon another’ by ‘means of a dangerous weapon,’ ‘has as an element the use, attempted use, or threatened use of physical force’” as required by the ACCA’s Force Clause.”* (slip op. at 21-22)

FACTUAL BACKGROUND

Whindleton was convicted of possessing a Mossberg shotgun after having previously been convicted of multiple felonies. His prior convictions included New York criminal sale of a controlled substance, New York second-degree assault, Massachusetts assault with a dangerous weapon, and Massachusetts possession with intent to distribute. He conceded that the Massachusetts drug conviction qualified as an ACCA predicate but challenged the New York drug conviction and Massachusetts assault conviction.

PROCEDURAL HISTORY

A jury found Whindleton guilty of possession of a firearm by a convicted felon under 18 U.S.C. § 922(g)(1). The district court treated his New York conviction for criminal sale of a controlled substance and his Massachusetts conviction for assault with a dangerous weapon as ACCA predicates, in addition to a drug conviction he conceded qualified, and imposed the ACCA mandatory minimum sentence of 180 months. The First Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- United States v. Carrigan, 724 F.3d 39, 48 (1st Cir. 2013)
- United States v. Holloway, 630 F.3d 252, 256-57, 260-62 (1st Cir. 2011)
- United States v. Bryant, 571 F.3d 147, 157 n.7 (1st Cir. 2009)
- Descamps v. United States, 133 S. Ct. 2276, 2281 (2013)
- United States v. McKenney, 450 F.3d 39, 40, 42-45 (1st Cir. 2006)
- United States v. King, 325 F.3d 110, 113, 115 (2d Cir. 2003)
- United States v. Vickers, 540 F.3d 356, 365-66 (5th Cir. 2008)
- United States v. Bynum, 669 F.3d 880, 886-87 (8th Cir. 2012)
- People v. Mike, 706 N.E.2d 1189, 1190-91 (N.Y. 1998)
- People v. Samuels, 780 N.E.2d 513, 516 (N.Y. 2002)
- Pascual v. Holder, 723 F.3d 156, 158-59 (2d Cir. 2013) (per curiam)
- United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990)
- Johnson v. United States, 135 S. Ct. 2551, 2558, 2563 (2015)
- Commonwealth v. Porro, 939 N.E.2d 1157, 1163 (Mass. 2010)
- Commonwealth v. Melton, 763 N.E.2d 1092, 1096 (Mass. 2002)
- United States v. Am, 564 F.3d 25, 33-34 & n.9 (1st Cir. 2009)
- Commonwealth v. Gorassi, 733 N.E.2d 106, 110 (Mass. 2000)
- United States v. Martinez, 762 F.3d 127, 137-38 (1st Cir. 2014)
- United States v. Dancy, 640 F.3d 455, 467-69 (1st Cir. 2011)
- Commonwealth v. Flanagan, 458 N.E.2d 777, 781 (Mass. App. Ct. 1984)
- Commonwealth v. Tevlin, 741 N.E.2d 827, 833 (Mass. 2001)
- Commonwealth v. Clark, 10 N.E.3d 670, 2014 WL 2776858, at *1 (Mass. App. Ct. June 20, 2014)
- United States v. Hart, 674 F.3d 33, 40-44 (1st Cir. 2012)
- United States v. Glover, 558 F.3d 71, 81 (1st Cir. 2009)
- United States v. Ramon Silva, 608 F.3d 663, 669-74 (10th Cir. 2010)
- United States v. Rede-Mendez, 680 F.3d 552, 558 (6th Cir. 2012)
- United States v. Fish, 758 F.3d 1, 9 (1st Cir. 2014)
- Arecibo Community Health Care, Inc. v. Puerto Rico, 270 F.3d 17, 22 (1st Cir. 2001)
- United States v. Rodriguez-Pacheco, 475 F.3d 434, 441 (1st Cir. 2007)
- United States v. Chanthachack, 483 F. App'x 580, 580 (1st Cir. 2012) (per curiam)
- Griffith v. Kentucky, 479 U.S. 314, 328 (1987)