

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 10-13528  
Non-Argument Calendar

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FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT APR 28, 2011 JOHN LEY CLERK
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D.C. Docket No. 0:09-cr-60286-KAM-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHAWN NICE,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Florida

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(April 28, 2011)

Before TJOFLAT, CARNES and BARKETT, Circuit Judges.

PER CURIAM:

Shawn Nice appeals his 180-month sentence after pleading guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). On appeal,

he argues that the district court erroneously enhanced his sentence under the Armed Career Criminal Act (“ACCA”), because his prior conviction under Fla. Stat. § 810.02 for burglary of an unoccupied dwelling did not constitute a “violent felony.”<sup>1</sup>

The ACCA defines a violent felony as any felony that, inter alia, “is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.” 18 U.S.C. § 924(e)(2)(B)(ii) (emphasis added). The Supreme Court has held that “a person has been convicted of burglary for purposes of a § 924(e) enhancement if he is convicted of any crime . . . 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).

Nice does not dispute that his prior conviction contains these basic elements. Rather, he argues that his prior conviction for burglary of an unoccupied dwelling does not constitute generic burglary as defined under Taylor because it does not pose the same risk of physical injury. However, that argument is foreclosed by Taylor. See id. at 597–98 (explaining that generic burglary for

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<sup>1</sup> We review de novo whether a prior conviction is a “violent felony” within the meaning of the ACCA. United States v. Day, 465 F.3d 1262, 1264 (11th Cir. 2006).

purposes of the ACCA “include[s] not only aggravated burglaries, but also run-of-the mill burglaries involving an unarmed offender, an unoccupied building, and no use or threat of force. . . . Congress thought ordinary burglaries, as well as burglaries involving some element making them especially dangerous, presented a sufficiently serious potential risk to count toward enhancement. We therefore reject petitioner’s view that Congress meant to include only a special subclass of burglaries . . . that involve especially dangerous conduct.”) (emphasis added; quotation marks omitted). Because Nice’s prior conviction constitutes burglary within the meaning of § 924(e)(2)(B)(ii), the district court did not err by finding it to be a violent felony, and it therefore did not err by enhancing his sentence under the ACCA.<sup>2</sup> Accordingly, we affirm.

**AFFIRMED.**

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<sup>2</sup> Thus, we need not address whether Nice’s conviction also constituted a violent felony under § 924(e)(2)(B)(ii)’s residual clause.