

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 15-10955
Non-Argument Calendar

D.C. Docket No. 1:14-cr-20698-JAL-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS ANTONIO GERMAN,
a.k.a. Platano,

Defendant-Appellant.

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

(December 21, 2015)

Before MARCUS, WILLIAM PRYOR, and ANDERSON, Circuit Judges.

PER CURIAM:

Carlos German was sentenced to 180-months imprisonment, the mandatory minimum sentence required by the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e)(1), after pleading guilty to possession of a firearm as a convicted felon in violation of 18 U.S.C. § 922(g)(1). The district court sentenced German under the ACCA after finding that he had three prior convictions, one of which, attempted burglary of an unoccupied structure in violation of Fla. Stat. § 810.02, qualified as a violent felony under the residual clause of the ACCA. German appeals his sentence, arguing that the district court erred in applying a sentencing enhancement under the ACCA because the residual clause of the ACCA is unconstitutionally vague and because his prior conviction for attempted burglary cannot be a predicate “violent felony” under the enumerated offenses clause of the ACCA. The government concedes that the residual clause of the ACCA is unconstitutional under the Supreme Court’s recent decision in Johnson v. United States, 576 U.S. ___, 135 S. Ct. 2551, 2557-58 (2015), but contends that attempted burglary as defined by Florida qualifies as a predicate “violent felony” under the enumerated offenses clause of the ACCA.

After review of the parties’ briefs and the record on appeal, we conclude that the district court erred in sentencing German based on his previous attempted burglary conviction under the now-unconstitutional residual clause of the ACCA. He must be resentenced without reference to the residual clause. We leave it to

the district court in the first instance to determine whether a sentencing enhancement may be sustained in these circumstances based upon another clause of the ACCA.

VACATED AND REMANDED.