[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-10293
Non-Argument Calendar

D.C. Docket Nos. 9:16-cv-80930-DTKH; 0:07-cr-60281-DTKH-1

WALLACE THORNTON,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

(September 19, 2018)

Before TJOFLAT, NEWSOM, and BRANCH, Circuit Judges.

PER CURIAM:

Wallace Thornton, a federal prisoner serving a 204-month sentence[1] under the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e), appeals the district court's denial of his 28 U.S.C. § 2255 motion to vacate sentence, in which he asserted that his ACCA sentence was unconstitutional because he no longer had three qualifying prior violent felony convictions, in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015).[2] In relevant part, he argued that his two prior Florida aggravated battery convictions did not qualify as violent felonies under the ACCA's elements clause, despite our precedent to the contrary in *Turner v. Warden Coleman FCI (Medium)*, 709 F.3d 1328, 1341 (11th Cir. 2013), *abrogated on other grounds by Johnson*, 135 S. Ct. 2551. The district court determined that it was bound by *Turner*, and denied Thornton's § 2255 motion. Nevertheless, the district court granted Thornton a certificate of appealability on the issue of "[w]hether [his] conviction for Florida aggravated battery, pursuant to Fla. Stat. § 784.045(1), is a violent felony under the [ACCA]?"

Thornton maintains on appeal that his prior convictions for aggravated battery do not categorically qualify as violent felonies under the ACCA's elements

[1] Thornton pleaded guilty in 2008 to being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e)(1).

[2] In *Johnson*, the Supreme Court held that the residual clause of the violent felony definition in the ACCA was unconstitutionally vague and that imposing an increased sentence under that provision violated due process. 135 S. Ct. at 2557-58, 2563.

clause, that *Turner* was wrongly decided for various reasons, and that we should take this opportunity to reconsider our ruling in *Turner*. We affirm.

When reviewing the denial of a § 2255 motion, we review legal issues *de novo* and findings of fact for clear error. *Rhode v. United States*, 583 F.3d 1289, 1290 (11th Cir. 2009). "We may affirm on any ground supported by the record." *Castillo v. United States*, 816 F.3d 1300, 1303 (11th Cir. 2016) (quoting *LeCroy v. United States*, 739 F.3d 1297, 1312 (11th Cir. 2014)). Further, under the prior-panel-precedent rule, "a prior panel's holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this Court sitting *en banc*." *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008).

As an initial matter, Thornton failed to meet his burden of proof to establish entitlement to relief under *Johnson* because he did not establish that the district court more likely than not relied on the now-invalidated residual clause when imposing the ACCA enhancement, and the record is silent on this matter. *Beeman v. United States*, 871 F.3d 1215, 1221-22, 1224-25 (11th Cir. 2017) (holding that, in order to prove entitlement to relief based on *Johnson*, a § 2255 movant must establish that the district court more likely than not relied on the residual clause in imposing the ACCA enhancement, and where there is no evidence that the district court relied on the residual clause, the movant's claim must be denied). Although

Thornton maintains that *Beeman* was wrongly decided, it remains binding precedent. *Archer*, 531 F.3d at 1352.

Moreover, Thornton's argument that aggravated battery under Fla. Stat. § 784.045(1)(a)(2) is not a violent felony under the ACCA's elements clause is foreclosed by our prior binding precedent. In *Turner*, we held that convictions under Fla. Stat. § 784.045(1)(a)(1) and (1)(a)(2) categorically qualify as a violent felony under the ACCA's elements clause. *Turner*, 709 F.3d at 1341. Although Thornton maintains that *Turner* was incorrectly decided for various reasons and should therefore not foreclose his claim, we recently rejected a similar argument, explaining that, "even if *Turner* is flawed, that does not give us, as a later panel, the authority to disregard it." *United States v. Golden*, 854 F.3d 1256, 1257 (11th Cir.), *cert. denied*, 138 S. Ct. 197 (2017); *see also United States v. Fritts*, 841 F.3d 937, 942 (11th Cir. 2016) ("Under this Court's prior panel precedent rule, there is never an exception carved out for overlooked or misinterpreted Supreme Court precedent."), *cert. denied*, 137 S. Ct. 2264 (2017). Accordingly, we **AFFIRM**.