

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12161
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KEITH TAYLOR,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:14-cr-80048-DMM-1

Before JORDAN, LUCK, and BLACK, Circuit Judges.

PER CURIAM:

Keith Taylor, proceeding *pro se*, appeals the denial of his 18 U.S.C. § 3582(c)(1)(A) motion for sentence reduction and motion for reconsideration. Taylor sought to reduce his 276-month

sentence for felon in possession of a firearm and possession of cocaine with intent to distribute. The district court denied Taylor's sentence-reduction motion because (1) Taylor failed to show the existence of any extraordinary and compelling reasons for a sentence reduction, (2) Taylor would pose a danger to the community if he was released, and (3) the 18 U.S.C. § 3553(a) factors weighed against a sentence reduction. After review,¹ we affirm.

A district court may reduce a term of imprisonment under § 3582(c)(1)(A) if (1) there are extraordinary and compelling reasons for doing so, (2) doing so would not endanger any person or the community, and (3) the § 3553(a) factors favor doing so. *United States v. Tinker*, 14 F.4th 1234, 1237 (11th Cir. 2021). A district court may deny a sentence-reduction motion based on any one of those grounds. *Id.* at 1237-38. One extraordinary and compelling circumstance that could warrant a sentence reduction is if the defendant is serving an unusually long sentence and there is an intervening change in the law that creates a "gross disparity" between the defendant's current sentence and the sentence likely to be imposed at the time the sentence-reduction motion is filed. U.S.S.G. § 1B1.13(b)(6).

¹ We review *de novo* whether a defendant is eligible for a sentence reduction and review for abuse of discretion a district court's denial of an eligible defendant's sentence-reduction motion. *United States v. Giron*, 15 F.4th 1343, 1345 (11th Cir. 2021). We review for abuse of discretion a denial of a motion for reconsideration. *United States v. Simms*, 385 F.3d 1347, 1356 (11th Cir. 2004).

24-12161

Opinion of the Court

3

When he was sentenced in 2014, Taylor was designated as a career offender under U.S.S.G. § 4B1.1(a) based on, among other convictions, his 1993 conviction of the Florida offense of attempted robbery with a firearm, which significantly enhanced his guideline range. A defendant is designated as a career offender and is thus subjected to an enhanced guideline range if (1) his instant offense of conviction is either a crime of violence or a controlled substance offense, and (2) he has at least two prior convictions of either a crime of violence or a controlled substance offense. U.S.S.G. § 4B1.1(a). Taylor asserted that Florida attempted robbery is no longer a crime of violence that supports a career-offender designation under U.S.S.G. § 4B1.2(a), so he would not be designated as a career offender if he was sentenced after that change in law.

The district court denied Taylor's motion because it determined that, even if Florida attempted robbery is no longer a crime of violence, Taylor would still be designated as a career offender if he was sentenced after the asserted change in law because Taylor had a different prior conviction for a crime of violence, *i.e.*, his 1993 conviction for the Florida offense of aggravated assault with a firearm.

On appeal, Taylor challenges the district court's determination that his prior conviction for Florida aggravated assault was for a crime of violence.² Taylor argues that his 1993 conviction for

² Taylor does not challenge on appeal the district court's conclusions that his underlying federal conviction was for a controlled substance offense and that he had at least one prior conviction for a controlled substance offense.

Florida aggravated assault was not for a crime of violence because in 1993 a defendant could be convicted of aggravated assault in Florida even if he only had a reckless state of mind. *See Borden v. United States*, 593 U.S. 420, 429 (2021) (holding that the definition of “violent felony” in the Armed Career Criminal Act (“ACCA”) does not include violent offenses with a *mens rea* of recklessness); *see also United States v. Ochoa*, 941 F.3d 1074, 1107 (11th Cir. 2019) (explaining that ACCA precedent regarding the definition of “violent felony” is applicable for cases regarding U.S.S.G § 4B1.2(a)(1)’s definition of “crime of violence” because the two definitions are “virtually identical”).

This argument is foreclosed by binding precedent. In *Somers v. United States*, we certified to the Florida Supreme Court the question of whether Florida’s aggravated-assault statute could be violated by a reckless act for determining whether the Florida offense of aggravated assault was a violent felony under the ACCA. 66 F.4th 890, 893 (11th Cir. 2023). The Florida Supreme Court held that a defendant could not be convicted of aggravated assault in Florida based on a reckless act, and we then held that Florida aggravated assault was a violent felony under the ACCA. *Id.* at 893-96; *Somers v. United States*, 355 So. 3d 887, 891-92 (Fla. 2022).

We are bound by *Somers* to reject Taylor’s argument. *See United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008) (“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*.”). *Somers* controls here because the Florida Supreme Court’s interpretation of the aggravated-assault statute is “what that statute always meant,” including in 1993. *See Somers*, 66 F.4th at 896 (quotation marks omitted) (“[The defendant] cannot rely on earlier decisions of Florida’s intermediate courts of appeal to avoid [the Florida Supreme Court’s] clear holding.”); *see also United States v. Fritts*, 841 F.3d 937, 942-43 (11th Cir. 2016) (holding, in considering whether a prior conviction was for a violent felony under the ACCA, that the Florida Supreme Court’s later interpretation of the relevant statute controlled because that was “what that statute always meant”). Taylor’s reliance on *United States v. Anderson*, 99 F.4th 1106 (7th Cir. 2024), is inapt because that case is not binding on us, while *Somers* is.

In sum, the district court was correct under *Somers* that Taylor’s 1993 aggravated-assault conviction was for a crime of violence, so it did not err by concluding that Taylor would have been designated as a career offender if he was sentenced at the time he filed his sentence-reduction motion. For that reason, the district court did not err by determining that there were no extraordinary and compelling circumstances warranting a sentence reduction.³ Additionally, Taylor did not raise any arguments in his motion for reconsideration that established that he was entitled to his

³ We do not address Taylor’s arguments as to the district court’s alternative rulings because the district court could deny Taylor’s § 3582(c)(1)(A) motion based on any one of the three rulings independently. *See Tinker*, 14 F.4th at 1237-38.

requested relief, so the district court did not abuse its discretion by denying that motion. Accordingly, we affirm the district court's denial of Taylor's § 3582(c)(1)(A) motion and motion for reconsideration.

AFFIRMED.