

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Decided July 2, 2019

Before

MICHAEL S. KANNE, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 16-1580

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DENNIS M. FRANKLIN,
Defendant-Appellant.

Appeal from the United States District
Court for the Western District
of Wisconsin

No. 3:14-CR-00128

James D. Peterson,
Chief Judge.

No. 16-1872

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

SHANE SAHM,
Defendant-Appellant.

Appeal from the United States District
Court for the Western District
of Wisconsin

No. 3:15-CR-00110

James D. Peterson,
Chief Judge.

ORDER

The Supreme Court of Wisconsin has answered the question of state law that this court certified to it. *United States v. Franklin*, 928 N.W.2d 545 (Wis. 2019). Burglary under Wisconsin law, Wis. Stat. § 943.10(1m), applies to burglaries of vehicles as well as buildings and dwellings. That means the state crime is broader than the federal generic crime of burglary that may serve as a predicate for enhanced offenses under the federal Armed Career Criminal Act, 18 U.S.C. § 924(e). See *Mathis v. United States*, 136 S. Ct. 2243 (2016) (Iowa burglary statute broader than federal generic burglary because it applies to burglaries of vehicles). In response to our request, the Supreme Court of Wisconsin has decided definitively that the state crime is not “divisible” among different locations for purposes of applying the Armed Career Criminal Act. As a result, the prior Wisconsin burglary convictions of defendants-appellants Dennis Franklin and Shane Sahm do not qualify as prior convictions for “violent felonies” to support their federal sentences under the Armed Career Criminal Act. The parties have submitted statements of position under Circuit Rule 52. They and we agree on the next step. The federal sentences for both Franklin and Sahm in these appeals are hereby VACATED and their cases are REMANDED to the district court for resentencing without applying the Armed Career Criminal Act, 18 U.S.C. § 924(e).