

United States Court of Appeals
For the Eighth Circuit

No. 15-1621

United States of America

Plaintiff - Appellee

v.

Mustafa Ahmed Mohamed

Defendant - Appellant

Appeal from United States District Court
for the District of Minnesota - St. Paul

Submitted: November 16, 2015

Filed: December 14, 2015

[Unpublished]

Before LOKEN, BOWMAN, and GRUENDER, Circuit Judges.

PER CURIAM.

Mustafa Mohamed appeals from the sentence imposed by the District Court¹ after he pleaded guilty to being a felon in possession of ammunition and a firearm.

¹The Honorable Donovan W. Frank, United States District Judge for the District of Minnesota.

His counsel moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the sentence was unreasonable. We denied counsel’s withdrawal motion and ordered supplemental briefing addressing whether, in light of Johnson v. United States, 135 S. Ct. 2551, 2557 (2015) (holding that the residual clause of the Armed Career Criminal Act (ACCA) is unconstitutionally vague), the District Court committed error by applying a sentencing enhancement under the United States Sentencing Guidelines based on Mohamed’s prior burglary convictions.

Upon reviewing the supplemental briefs, we conclude that the District Court did not commit procedural error. See United States v. Stymiest, 581 F.3d 759, 767 (8th Cir. 2009) (de novo review), cert. denied, 559 U.S. 1055 (2010). Specifically, the court properly enhanced Mohamed’s sentence based on prior convictions for first degree burglary of a residence, Minn. Stat. § 609.582, subd. 1(c), and third degree burglary of a commercial building, Minn. Stat. § 609.582, subd. 3. See U.S.S.G. § 2K2.1(a)(2) & comment. (n.1) (stating that the Guidelines base offense level is 24 if the defendant committed the instant offense after sustaining two or more felony convictions of, inter alia, a crime of violence and cross-referencing U.S.S.G. § 4B1.2 (career-offender provision)). As to the first degree burglary conviction, burglary of a dwelling is specifically included in the language of the career-offender provision as a “crime of violence.” See U.S.S.G. § 4B1.2(a)(2) (defining “crime of violence” as “any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that . . . is burglary of a dwelling”). Further, this Court has held that burglary of a commercial building qualifies as a crime of violence under the same provision, without relying on the residual clause. See Stymiest, 581 F.3d at 767, 769 (setting out alternative holdings that defendant’s sentence was properly enhanced under § 4B1.2(a) because third-degree burglary of an unoccupied structure met the generic definition of burglary and “because the ‘of a dwelling’ limitation in § 4B1.2(a)(2) was invalidated by the Supreme Court’s decision in Taylor [v. United States], 495 U.S. 575, 597 (1990)”); United States v. Bell, 445 F.3d 1086, 1090 (8th Cir. 2006).

As to the contentions in counsel's Anders brief, we conclude that the within-Guidelines sentence was not substantively unreasonable. See United States v. Salazar-Aleman, 741 F.3d 878, 881 (8th Cir. 2013) (noting that a district court abuses its discretion and imposes a substantively unreasonable sentence if the court fails to consider a relevant factor, gives significant weight to an improper or irrelevant factor, or commits a clear error of judgment in weighing the relevant factors); United States v. Cook, 698 F.3d 667, 670 (8th Cir. 2012) (treating a within-Guidelines sentence as presumptively reasonable).

Accordingly, the judgment is affirmed. We deny as moot Mohamed's motion for new counsel.
