

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

CIVIL APPEALS DOCKETING STATEMENT

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PETER OPPENEER
CLERK US DIST COURT
WD OF WI

1. Title: Stanley v. United States
2. District: Western District of Wisconsin
3. Judge: The Honorable Barbara Crabb
4. District Court Number: Civ. No. 15-cv-222-bbc; Grim. No. 03-cr-62-jcs
5. Date Notice of Appeal Filed: November 30, 2015
6. Brief Description of Action and Result Below: Petitioner was sentenced as a career offender in 2004 under the mandatory guidelines regime. Three prior state convictions formed the basis of the career offender determination. In April 2015, Petitioner filed his first § 2255 motion, arguing that two of the prior state convictions could not have been used to enhance his sentence. Petitioner then filed an amended petition, arguing that one of those offenses -- unlawful use of a weapon -- did not constitute a crime of violence under Johnson v. United States, 135 S. Ct. 2551 (2015). The government initially argued that Johnson did not apply retroactively to guidelines claims and that therefore, Petitioner's petition was untimely. It subsequently withdrew its original responsive filing, and, in its amended response, conceded that Johnson applied to challenges to erroneous sentences under the mandatory guidelines scheme. The government further conceded that Petitioner's unlawful use of a weapon conviction was not a crime of violence after Johnson. The government argued, however, that Petitioner's prior state

conviction for aggravated battery continued to qualify as a crime of violence because Illinois battery is a divisible statute, and, in its view, Petition had been convicted of a violent version of the offense. Petitioner argued in response that nothing in the extant state court records excluded the possibility that Petitioner, despite having been indicted for a violent version of the offense, had not pleaded guilty to a version of the offense that was not categorically violent. In denying the Petition, the district court found that it was untimely, and that the state court records showed Petitioner was convicted of a categorically violent version of the offense.

7. Principal Issues to Be Raised on Appeal: (1) The district court erred in dismissing the petition on timeliness grounds, because (a) the government waived its affirmative defense of timeliness when it conceded that Johnson applied to one of Petitioner's prior convictions and failed to renew its timeliness defense in its amended response to the petition; (2) the district court erred in finding that state court records indicated that Petitioner had pleaded guilty to a violent version of aggravated battery, because under Illinois law, a defendant may be indicted on the categorically violent version of the statute but plead guilty to the non-categorically violent version; hence, under Shepard v. United States, 544 U.S. 13 (2005), an indictment for Illinois aggravated battery is not a "generically limited" document and cannot, by itself, support a career offender enhancement.

8. Name and Signature: Lonzo Stanley

Lonzo Stanley

CERTIFICATE OF SERVICE

I certify that on this 30th day of November, 2015, I
mailed a copy of the foregoing to counsel for the Respondent.

Lonzo Stanley
Lonzo Stanley