SUMMARIES OF RECENT CASE LAW
JANUARY 1, 2019–MARCH 31, 2019

DECISIONS OF THE SUPREME COURT OF THE UNITED STATES

Stokeling v. United States, 139 S. Ct. 544 (2019) (a robbery offense with an element of the use, or threatened or attempted use, of force sufficient to overcome a victim's resistance is a violent felony under the ACCA's elements clause, 18 U.S.C. § 924(e)(2)(B)(i)).

Garza v. Idaho, 139 S. Ct. 738 (2019) (counsel's failure to timely file an appeal in accordance with a defendant's request is deficient performance and will be presumed prejudicial even if the defendant's plea agreement contained an appeal waiver).

DECISIONS OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PUBLISHED OPINIONS

Solomon v. United States, 911 F.3d 1356 (11th Cir. 2019) (a second or successive 28 U.S.C. § 2255 motion challenging the validity of 18 U.S.C. § 924(c)'s residual clause does not satisfy the gatekeeping requirements of § 2255(h) because no new rule of constitutional law holds that § 924(c)'s residual clause is impermissibly vague).

United States v. Campbell, 912 F.3d 1340 (11th Cir. 2019) (in light of *Rodriguez v. United States,* 135 S. Ct. 1609 (2015), law enforcement officers unlawfully prolonged a traffic stop when they asked Mr. Campbell whether he had contraband in the car without reasonable suspicion, but the evidence seized during a subsequent search of the car was admissible under the good-faith exception to the exclusionary rule because the officer's actions were lawful under Eleventh Circuit precedent at the time).

Brewster v. Hetzel, 913 F.3d 1042 (11th Cir. 2019) ((1) Alabama state courts misconstrued an inmate's post-conviction claim of ineffective assistance of counsel as a challenge to his trial counsel's failure to object to only the language of repeated supplemental instructions to a deadlocked jury, and (2) trial counsel rendered deficient performance by neither objecting to the supplemental instructions nor moving for a mistrial after the jury repeatedly reported that it was deadlocked with a lone holdout for acquittal, and that failure prejudiced Mr. Brewster).

United States v. Munksgard, 913 F.3d 1327 (11th Cir. 2019) ((1) a bank's certificate of FDIC insurance from the time of its charter in 1990, combined with testimony that the bank was FDIC insured at the time of trial, "while not overwhelming, was sufficient to prove beyond a reasonable doubt" that the bank was FDIC insured at the time of offenses committed several years before the trial, as 18 U.S.C. § 1014 requires, and (2) Mr. Munksgard's forgery of another person's signature was "use" of that person's name in violation of 18 U.S.C. § 1028A(a)(1); Tjoflat, J., dissented, writing that he would have held that the government's evidence of the bank's insured status was insufficient and that the majority effectively "appl[ied] an unconstitutional presumption of insured status").

United States v. Valois, 915 F.3d 717 (11th Cir. 2019) (the trial court did not abuse its discretion by denying a defendant's motion for a mistrial based on a prosecutor's reference to a separate seizure of cocaine shortly before the seizure of the defendant's boat because the court specifically instructed the jury that the argument was not evidence, and the prosecutor was addressing the defense's theory that the Coast Guard incorrectly attributed drugs jettisoned from the first seized boat).

United States v. Caniff, 916 F.3d 929 (11th Cir. 2019) (sending a private text message can qualify as "mak[ing] . . . [a] notice" seeking child pornography, in violation of 18 U.S.C. § 2251(d)(1)(A); Newsom, J., dissented, writing that, despite finding it "utterly nauseating," he would have held that by prohibiting "mak[ing], print[ing], or publish[ing]" a "notice or advertisement" the statute contemplates "at least dissemination beyond a single individual").

United States v. Harris, 916 F.3d 948 (11th Cir. 2019) (sufficient evidence supported a former prison guard's conviction of Hobbs Act extortion for taking prepaid debit card numbers from inmates who obtained them by a scam because, although the inmates had no choice in giving up the debit card numbers, a victim's "consent" be shown where a victim grudgingly or reluctantly gives up his property).

United States v. Pickett, 916 F.3d 960 (11th Cir. 2019) (because the district court determined, before *Beeman v. United States*, 871 F.3d 1215 (11th Cir. 2017), that Mr. Pickett's ACCA sentence *could have been* based on the Act's now-void residual clause, the Eleventh Circuit vacated the judgment and remanded for the district court consistent with *Beeman* to "consider in the first instance whether Pickett can show, as a historical fact, that he was more likely than not sentenced under only the residual clause").

United States v. Amodeo, 916 F.3d 967 (11th Cir. 2019) (Mr. Amodeo lacked standing to appeal the district court's partial vacatur of a forfeiture order that divested him of ownership of two shell corporations because the vacatur "did not revive Amodeo's ownership of the corporations" and so did not injure him).

United States v. Gibbs, 917 F.3d 1289 (11th Cir. 2019) (officers were justified in initiating a traffic stop and detaining Mr. Gibbs and another man where the officers observed the men standing beside a car wrongfully stopped in the middle of the traffic lane and the officers did not know which man was the driver).

United States v. Padgett, 917 F.3d 1312 (11th Cir. 2019) (even though the district court clerk filed a defendant's pro se "notice of her intent to file a collateral attack with [the district] court, based on the ineffective assistance of her . . . counsel" as a notice of appeal, the pleading was not a notice of appeal because it expressed no desire to appeal the judgment, only to collaterally attack it).

United States v. Gandy, 917 F.3d 1333 (11th Cir. 2019) (the district court correctly held that Mr. Gandy's prior Florida battery conviction involved intentionally causing bodily harm and qualified as a crime of violence

under U.S.S.G. § 4B1.2(a)(1)'s elements clause based on an arrest report incorporated into the state plea agreement, which labeled the charge as "Battery Causing Bodily Harm"; Rosenbaum, J., dissented and would have held that the arrest report did not show that Mr. Gandy necessarily was convicted of bodily-harm battery and not battery by touching and striking, which is not an elements-clause crime of violence because (a) the charging instrument charged both offenses in the alternative, (b) the factual basis in the report could establish either offense, and (c) the label was not part of the factual basis).

UNPUBLISHED OPINIONS FROM THE NORTHERN DISTRICT OF ALABAMA

United States v. Flippo, --- F. App'x ---, 2019 WL 117444 (11th Cir. Jan. 7, 2019) (N.D. Ala. No. 2:16-cr-451-VEH-TMP) (evidence indicating that Ms. Flippo sold methamphetamine to a confidential informant, admitted serving as a translator for her boyfriend's drug transactions, and had drug scales and 235 grams of methamphetamine in her house was sufficient to support her conviction for conspiracy to distribute methamphetamine).

United States v. Aubry, --- F. App'x ---, 2019 WL 157535 (11th Cir. Jan. 10, 2019) (N.D. Ala. No. 2:15-cr-283-LSC-HNJ) (Mr. Aubry's life term of supervised release following imprisonment for drug offenses was procedurally and substantively reasonable because the district court adequately identified the 18 U.S.C. § 3553(a) factors it relied on and reasonably weighed those factors).

United States v. Burnett, --- F. App'x ---, 2019 WL 168618 (11th Cir. Jan. 11, 2019) (N.D. Ala. No. 5:16-cr-154-SLB-SGC) ((1) the district court did not abuse its discretion by excluding testimony Mr. Burnett sought to present about legal advice he had received because he had not disclosed the material facts to the attorney fully enough to rely on her advice, and the testimony would have been cumulative of other evidence; (2) any procedural error in calculating the loss amount would have been harmless because the district court stated that it would have imposed the same sentence regardless and the sentence still would have been

substantively reasonable if the loss amount and Guidelines range were lower).

Mims v. United States, --- F. App'x ---, 2019 WL 668416 (11th Cir. Feb. 19, 2019) (N.D. Ala. No. 1:17-cv-8013-SLB) (Mr. Mims's 28 U.S.C. § 2255 motion was untimely because he filed it more than 16 months after his conviction became final and it did not assert claims of equitable tolling or actual innocence).

United States v. Burwell, --- F. App'x ---, 2019 WL 982168 (11th Cir. Feb. 27, 2019) (N.D. Ala. No. 1:17-cr-471-MHH-TMP) (the district court erred in granting Mr. Burwell's motion to suppress and finding that his consent to a search of his car was not voluntary because it was coerced by a police officer's "sweet talk," and, alternatively, the officer did not unlawfully detain Mr. Burwell by asking questions unrelated to the mission of the traffic stop before Mr. Burwell was free to leave).

Levert v. United States, --- F. App'x ---, 2019 WL 1306802 (11th Cir. Mar. 21, 2019) (N.D. Ala. No. 2:16-cv-8084-LSC) (the district court correctly determined that Mr. Levert's 28 U.S.C. § 2255 motion failed to show his ACCA sentence more likely than not relied exclusively on the ACCA's residual clause because his presentence report's uncontested conclusion was that three of his prior convictions were predicates under the ACCA's elements clause).