



U. S. Department of Justice

*Jason R. Coody
United States Attorney
Northern District of Florida*

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United States Attorney's Office
Northern District of Florida
(850) 216-3845
libby.lastinger@usdoj.gov
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ELEVENTH CIRCUIT UPHOLDS ARMED CAREER CRIMINAL SENTENCE AND HOLDS FLORIDA AGGRAVATED ASSAULT A VIOLENT FELONY

TALLAHASSEE, FLORIDA – Jason R. Coody, United States Attorney for the Northern District of Florida, announced that on April 25, 2023, the U.S. Court of Appeals for the Eleventh Circuit upheld the 211-month sentence of Fred Somers, age 46. That sentence was imposed by Senior U.S. District Court Judge Robert L. Hinkle in January of 2013 after Somers plead guilty to possession of a firearm by a convicted felon and possession of an unregistered firearm.

“The Armed Career Criminal Act (ACCA) mandates harsher sentences for armed felons who have at least three prior convictions for either ‘violent felonies’ or ‘serious drug offenses’,” said U.S. Attorney Coody. “With a 20-year-history full of drug and violent felony offenses, Somers is the exact type of dangerous, career criminal the ACCA was designed to keep off the streets.”

Somers’ criminal history includes felony convictions for burglary of a structure, conspiracy to distribute heroin, false imprisonment and battery, aggravated assault with a deadly weapon, and resisting an officer with violence. Based on those prior convictions, the government sought, and the district court imposed, an enhanced sentence under the ACCA.

In January of 2016, Somers filed a collateral motion challenging his ACCA sentence. The district court denied his motion, but Somers appealed, arguing that he was incorrectly sentenced under ACCA because his aggravated assault conviction did not meet ACCA’s definition of “violent felony.” After the United States Supreme Court’s decision in *Borden v. United States*, 141 S. Ct. 817 (2021), which held that ACCA’s violent felony definition excludes reckless crimes, the Eleventh Circuit sent the case to the Florida Supreme Court for clarification of whether Florida’s assault statute covers reckless threats.

After briefing and oral argument, the Florida Supreme Court rejected Somers’ argument that Florida assault can be committed recklessly. *See Somers v. United States*, 355 So.3d 887 (Fla. 2022). The Florida Supreme Court reasoned that the ordinary meaning of Florida’s assault definition “prohibits an intentional expression of an intent to use physical force to harm another’s person” and that such expression “cannot be accomplished via a reckless act.” With the benefit

of the Florida Supreme Court's clarification of Florida law, the Eleventh Circuit affirmed the district court's denial of Somers' motion in a published opinion, holding that Florida convictions for aggravated assault qualify as violent felonies under ACCA.

Assistant United States Attorney Jordane Learn represented the government before the Eleventh Circuit and the Florida Supreme Court.

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