

United States Court of Appeals
For the Eighth Circuit

No. 17-2758

United States of America

Plaintiff - Appellee

v.

Vernon Montrell Webster, also known as Webster Connell Spunky, Jr., also
known as Tracy Connell Webster, Jr.

Defendant - Appellant

Appeal from United States District Court
for the Northern District of Iowa - Waterloo

Submitted: November 8, 2019
Filed: November 21, 2019
[Unpublished]

Before LOKEN, GRUENDER, and GRASZ, Circuit Judges.

PER CURIAM.

Vernon Webster pleaded guilty to being a felon in possession of a firearm, *see* 18 U.S.C. § 922(g)(1), and he received an enhanced sentence as an armed career criminal, *see id.* § 924(e). We affirmed his sentence, despite his argument that his three prior Wisconsin convictions for burglary under Wis. Stat. § 943.10(1m) did not

qualify as violent felonies under the Armed Career Criminal Act (“ACCA”), on the authority of *United States v. Lamb*, 847 F.3d 928 (8th Cir. 2017), *cert. denied*, 138 S. Ct. 1438 (2018), in which we held that an identical burglary conviction qualified as a violent felony under the ACCA. *See United States v. Webster*, 730 F. App’x 396 (8th Cir. 2018) (*per curiam*). Webster then petitioned the Supreme Court for a writ of *certiorari*, which granted it, vacated our judgment, and remanded the case to us with instructions to reconsider the matter in light of *United States v. Franklin*, 2019 WI 64, 387 Wis. 2d 259, 928 N.W.2d 545. *See Webster v. United States*, 589 U.S. ---, 2019 WL 4921146 (Oct. 7, 2019).

The parties agree, as we have already recognized, that *Lamb* is no longer good law following *Franklin*. *See United States v. Holston*, 773 F. App’x 336, 337 (8th Cir. 2019) (*per curiam*). In light of *Franklin*, they also agree that the Wisconsin burglary statute under which Webster was convicted is broader than generic burglary under the ACCA. Thus, these convictions “do not qualify as violent felonies under the ACCA.” *See id.* The Government “agrees that the case should be remanded to the district court for resentencing” without the ACCA enhancement.

Accordingly, we vacate Webster’s sentence and remand for resentencing without application of the ACCA.

LOKEN, Circuit Judge, concurring.

United States v. Holston is an unpublished opinion that is not controlling precedent, and I believe it was wrongly decided. However, as the government agrees this case should be remanded for resentencing, I concur.
