

08-6925 JOHNSON V. UNITED STATES

DECISION BELOW:528 F.3d 1318

LOWER COURT CASE NUMBER: 07-13497

QUESTIONS PRESENTED:

1. Whether, when a state's highest court holds that a given offense of that state does not have as an element the use or threatened use of physical force, that holding is binding on federal courts in determining whether that same offense qualifies as a "violent felony" under the federal Armed Career Criminal Act, which defines "violent felony" as, inter alia, any crime that "has as an element the use, attempted use, or threatened use of physical force against the person of another."
2. Whether this court should resolve a circuit split on whether a prior state conviction for simple battery is in all cases a "violent felony" - a prior offense that has as an element the use, attempted use, or threatened use of physical force against the person of another. Further, whether this court should resolve a circuit split on whether the physical force required is a de minimis touching in the sense of "Newtonian mechanics" or whether the physical force required must be in some way violent in nature - that is the sort of force that is intended to cause bodily injury, or at a minimum likely to do so.
3. Whether the district court lacked the authority to sentence Mr. Johnson as an Armed Career Criminal, given that Mr. Johnson did not admit the predicate offenses for such a classification when he pled guilty.

CERT. GRANTED 2/23/2009

LIMITED TO QUESTIONS 1 AND 2 PRESENTED BY THE PETITION.