

Wednesday, April 25, 2007

**More bad news for federal firearms defendants.**

Image from the Government Printing Office's website. On April 18, 2007, the Supreme Court affirmed a fifteen-year federal mandatory minimum sentence under the Armed Career Criminal Act (ACCA) -- the federal system has no parole -- for being a felon in possession of a firearm, with three qualifying predicate violent felony convictions. *James v. U.S.*, \_\_\_ U.S. \_\_ (April 18, 2007). A five-justice majority determined that attempted burglary qualified as a violent felony conviction that would be counted towards the fifteen-year mandatory minimum prison sentence. Why? Because, says the Supreme Court majority, (1) the applicable Florida attempted burglary statute requires an overt act towards committing a burglary rather than just mere preparation, and (2) the Florida crime of attempted burglary, therefore, "falls within the ACCA's residual provision for crimes that 'otherwise involv[e] conduct that presents a serious potential risk of physical injury to another.' 18 U.S.C. Â§ 924(e)(2)(B)(ii)." *James v. U.S.*, \_\_\_ U.S. \_\_. Serious? Serious as in "serious effort to win the lottery?" Legislators should be left to do the serious work of sufficiently defining crimes that form the basis of mandatory minimum prison sentences, rather than leaving courts with the work to determine applicable residual predicate crimes. Note that this case is another example that the Supreme Court's four most conservative justices will sometimes depart from each other on criminal law issues. In *James*, conservative Justice Alito wrote the majority opinion, joined by conservative Chief Justice Roberts, also joined by Justices Breyer (no surprise, considering how much he supports the governmental regulatory function), Kennedy, and Souter (who often votes with the court's more liberal Justices Ginsburg, Stevens and Breyer). Conservative Justice Scalia -- joined by Justices Stevens and Ginsburg -- penned a stinging dissent (as many of his dissents are), saying "The problem with the Court's approach to determining which crimes fit within the residual provision is that it is almost entirely ad hoc." *James* (Scalia, J., dissenting). Conservative Justice Thomas insisted that *Apprendi* prohibits courts, rather than juries, from determining the crimes that fit within the ACCA's residual clause: "For the reasons set forth in my opinion concurring in part and concurring in the judgment in *Shepard v. United States*, 544 U. S. 13, 27 (2005), I believe that "the constitutional infirmity of Â§924(e)(1) as applied to [James] makes today's decision an unnecessary exercise." *Apprendi v. New Jersey*, 530 U. S. 466 (2000), and its progeny prohibit judges from "mak[ing] a finding that raises [a defendant's] sentence beyond the sentence that could have lawfully been imposed by reference to facts found by the jury or admitted by the defendant." *United States v. Booker*, 543 U. S. 220, 317-318 (2005) (THOMAS, J., dissenting in part). Yet that is precisely what the Armed Career Criminal Act, 18 U. S. C. Â§924(e) (2000 ed. and Supp. IV), permits in this case." *James* (Thomas, J., dissenting). This *James* case points out how draconian is the federal sentencing and prosecution system, which cages countless presumed-innocent defendants pretrial, and warehouses countless convicted defendants for such lengthy time periods that too many federal criminal defendants see pleading guilty and snitching often as the only way around draconian mandatory minimum sentences and sentencing guidelines. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00