

## Brooks Pierce Lawyer Wins Key Court Decision in Fourth Circuit Court of Appeals

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Mike Dowling, an attorney in the Raleigh office of Brooks Pierce, recently won a critical decision in the United States Court of Appeals for the Fourth Circuit. The appellate court's decision could reduce Dowling's client's prison sentence by more than a decade and will likely result in reduced sentences for many other criminal defendants. The decision may also provide deportation relief for certain undocumented residents.

The core issue in the case was whether Dowling's client's convictions for North Carolina common law robbery could be considered "violent felonies" under the Armed Career Criminal Act ("ACCA") –the federal "three-strikes" sentencing law. At sentencing, Dowling argued that those convictions did not qualify as violent felonies. The district court disagreed, and Dowling's client Ezekiel Donja Gardner was classified as an armed career criminal and sentenced to 262 months in federal prison.

In his appeal to the U.S. Court of Appeals, Dowling again argued that Gardner's North Carolina common law robbery convictions did not qualify as violent felonies that would classify Gardner as an armed career criminal under the ACCA.

The definition of "violent felony" under the ACCA is any crime, punishable by more than a year in prison, that has "as an element, the use, attempted use, or threatened use of physical force against the person of another." The law describes physical force as a "violent force – that is force capable of causing physical pain or injury to another person." Physical force, under the ACCA, does not include minor touching.

North Carolina robbery involves a taking of the victim's property "by violence or fear." Dowling argued that North Carolina's courts had found even minimal contact may be sufficient to establish the "violence or fear" needed to sustain a robbery conviction. For example, in one case the defendant's act of pushing a victim's hand off of a carton of cigarettes was determined to be sufficient enough force to uphold a common law robbery conviction.

Based on decisions such as those, the Court of Appeals ruled that North Carolina common law robbery does not necessarily involve the minimum threshold level of force for purposes of the ACCA's violent felony definition. Therefore, convictions for North Carolina common law robbery do not categorically qualify as violent felonies under the ACCA, and those convictions cannot be used as one of the three prior convictions for purposes of the ACCA sentencing enhancement.

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The Fourth Circuit's holding could provide sentencing and deportation relief to many others, since the violent felony definition under the Armed Career Criminal Act is similar to other important statutory and guideline definitions under federal sentencing and immigration laws.

For instance, the Career Offender mega sentencing enhancement under § 4B1.1 of the United States Sentencing Guidelines depends in many cases on the presence of two “crimes of violence,” a phrase that is defined similarly to the ACCA definition of “violent felony.” After Gardner’s case, North Carolina common law robbery may no longer qualify as a predicate “crime of violence” for purposes of the Career Offender enhancement. Similarly, under federal immigration law, certain aliens are deportable based upon prior convictions for a “crime of violence,” a phrase that is defined similarly to the violent felony definition under ACCA. North Carolina common law robbery now may no longer qualify as a crime of violence under that statutory subsection either.

The case, *United States v. Gardner*, No. 14-4533, was decided May 18, 2016, by the United States Court of Appeals for the Fourth Circuit. Federal trial courts have already begun granting habeas corpus relief to certain convicted defendants based on the holding in the case. The Court’s holding has also been cited as persuasive authority by other federal courts across the country.

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