

United States Court of Appeals
For the Eighth Circuit

No. 19-1725

United States of America

Plaintiff - Appellee

v.

Cody Kinzie Dittmar

Defendant - Appellant

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

Submitted: April 13, 2020

Filed: April 28, 2020

[Unpublished]

Before COLLOTON, GRUENDER, and GRASZ, Circuit Judges.

PER CURIAM.

Cody Dittmar pleaded guilty to being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). The district court found that Dittmar qualified for a sentencing enhancement under the Armed Career Criminal Act (“ACCA”), *see* 18 U.S.C. § 924(e), based on two prior Iowa convictions for arson and one prior Wisconsin conviction for burglary. Dittmar previously appealed his designation as

an armed career criminal, we vacated his sentence on grounds not relevant to this appeal, and we remanded the matter for resentencing. *United States v. Dittmar*, 897 F.3d 958, 959, 961 (8th Cir. 2018). On remand, the district court once again concluded Dittmar qualified as an armed career criminal on the basis of the same state convictions. Dittmar again appeals, once more challenging his designation as an armed career criminal.

In light of *United States v. Franklin*, 2019 WI 64, 928 N.W.2d 545, which was decided after Dittmar's resentencing, the Government now concedes that Dittmar does not qualify as an armed career criminal because his Wisconsin burglary conviction is not an ACCA predicate offense. *See United States v. Webster*, 784 F. App'x 975 (8th Cir. 2019) (per curiam). As such, in accordance with the parties' request, we again vacate Dittmar's sentence and remand this matter to the district court for resentencing without the ACCA enhancement.
