

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

OCT 27 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JONATHAN BRADLEY PETERSON,

Defendant - Appellant.

No. 07-30465

D.C. No. CR-06-60130-HO

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Oregon  
Michael R. Hogan, District Judge, Presiding

Argued and Submitted August 28, 2008  
Seattle, Washington

Before: T.G. NELSON, HAWKINS and BYBEE, Circuit Judges.

Jonathan Bradley Peterson pleaded guilty to bank robbery in violation of 18 U.S.C. § 2113(a). At sentencing, the district court found that Peterson qualified as a “career offender” under U.S.S.G. § 4B1.1, and sentenced him to 120 months’

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

imprisonment. We have jurisdiction under 28 U.S.C. § 1291. We vacate the sentence and remand for resentencing.

Peterson’s conviction under Or. Rev. Stat. § 811.540, for attempting to elude a police officer, is not categorically a crime of violence because the statute criminalizes conduct that does not “present[ ] a serious potential risk of physical injury to another,” as required by U.S.S.G. § 4B1.2(a)(2). *See United States v. Jennings*, 515 F.3d 980, 989-91 (9th Cir. 2008); *United States v. Kelly*, 422 F.3d 889, 895 (9th Cir. 2005); *see also Begay v. United States*, 128 S. Ct. 1581, 1584-88 (2008) (requiring crime to be similar to listed crimes, which are “purposeful,” “violent,” and “aggressive”). Further, because the statute is missing altogether the requirement that the defendant’s conduct “present[ ] a serious potential risk of physical injury to another,” the modified categorical approach is inapplicable. *See Navarro-Lopez v. Gonzales*, 503 F.3d 1063, 1073 (9th Cir. 2007) (en banc); *cf. Chambers v. United States*, 129 S. Ct. 687, 690-91 (2009) (in making determination under ACCA whether crime “involved conduct that presents a serious potential risk of physical injury,” courts are to consider the generic crime as generally committed and not whether the defendant’s “prior crime, as committed on a particular occasion, did or did not involve violent behavior”).

Sentence VACATED and REMANDED for resentencing.