

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

February 17, 2012

Lyle W. Cayce
Clerk

No. 11-50603
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

KENNETH EUGENE MOORE,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:11-CR-29-1

Before HIGGINBOTHAM, GARZA, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Appealing the judgment in a criminal case, Kenneth Eugene Moore raises arguments that he concedes are foreclosed by *United States v. Hernandez*, 633 F.3d 370, 374 (5th Cir.), *cert. denied*, 131 S. Ct. 3006 (2011), which held that a sentence within the statutory maximum that is based upon judge-found facts does not violate the Sixth Amendment. The Government's motion for summary

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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affirmance is GRANTED, the Government's alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.