

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-10047
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 12, 2016

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JACOB SETH THORNTON,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:15-CR-53-1

Before HIGGINBOTHAM, PRADO, and HAYNES, Circuit Judges.

PER CURIAM:*

Jacob Seth Thornton challenges the reasonableness of the 188-month within-guidelines sentence imposed following his guilty plea conviction for receipt of child pornography in violation of 18 U.S.C. § 2252(a)(2). Thornton argues that the child pornography Guidelines, U.S.S.G. § 2G2.2 et seq., lack an empirical basis and, as a result, his sentence is unreasonable. He recognizes that this argument is foreclosed by *United States v. Miller*, 665 F.3d 114, 121-

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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22 (5th Cir. 2011), but raises the issue to preserve it for possible further review. Thornton suggests that the district court erred by including the child pornography guidelines in its 18 U.S.C. § 3553(a) analysis, an argument directly contrary to *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1345 (2016), which explains the importance of consulting the guidelines in sentencing defendants. Additionally, he has failed to rebut the presumption of reasonableness that is accorded his within-guidelines sentence. *See United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009).

Accordingly, the Government's motion for summary affirmance is GRANTED. The Government's alternative motion for an extension of time is DENIED as unnecessary.