

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

United States Court of Appeals
Fifth Circuit

FILED

September 25, 2018

Lyle W. Cayce
Clerk

No. 16-41576
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MICHAEL GUARDIOLA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:16-CV-211
USDC No. 2:05-CR-599-1

Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:*

Michael Guardiola, federal prisoner # 50187-179, appeals the district court's denial of his 28 U.S.C. § 2255 motion. In that motion, he sought resentencing, arguing that his predicate convictions no longer qualify as violent felonies under the Armed Career Criminal Act (ACCA) in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015), which *Welch v. United States*,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 16-41576

136 S. Ct. 1257 (2016) makes retroactive. Our review is de novo. *See United States v. Taylor*, 873 F.3d 476, 479 (5th Cir. 2018).

Guardiola contends that his prior Texas convictions for aggravated robbery are not violent felonies under the ACCA. *See* 18 U.S.C. § 924(e)(1), (2)(B). But we recently rejected a similar challenge, holding that convictions under Texas Penal Code § 29.03(a)(2) qualified as violent felony convictions under the ACCA's force clause. *See United States v. Lerma*, 877 F.3d 628, 636 (5th Cir. 2017), *cert. denied*, 138 S. Ct. 2585 (2018).

AFFIRMED.