

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

No. 17-10564
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 3, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

JUAN DANIEL MARES,

Defendant–Appellant.

Appeal from the United States District Court
for the Northern District of Texas
No. 2:16-CR-55-1

Before HIGGINBOTHAM, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Juan Mares pleaded guilty of possession with intent to distribute

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 17-10564

methamphetamine. He contends that the district court plainly erred under the Fifth and Sixth Amendments by imposing a sentence based on factual findings that were not supported by proof beyond a reasonable doubt. He concedes that his theory is foreclosed under current circuit law, but he raises the claim solely to preserve it for further review.

The government has filed an unopposed motion for summary affirmance or, alternatively, for an extension of time to file a brief on the merits. Summary affirmance is proper where, among other instances, “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Because Mares’s arguments are foreclosed by *United States v. Tuma*, 738 F.3d 681, 693 (5th Cir. 2013), the motion for summary affirmance is GRANTED, and the judgment is AFFIRMED. The government’s alternative motion for an extension of time to file its brief is DENIED as unnecessary.