

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

No. 17-10787
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 7, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ALFONSO ESCOBEDO GARCIA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:16-CR-131-1

Before KING, ELROD, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Alfonso Escobedo Garcia pleaded guilty to conspiring to possess with intent to distribute methamphetamine. The district court varied below the sentencing guidelines range and imposed 144 months' imprisonment and five years of supervised release. Garcia challenges his sentence's substantive rea-

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 17-10787

sonableness, arguing that U.S.S.G. § 2D1.1 is untethered to empirical evidence. The Government moved for either summary affirmance or an extension of time to file an appellate brief.

We grant neither motion but affirm the district court's judgment. Our case law rejects arguments like Garcia's—that *Kimbrough v. United States*, 552 U.S. 85, 109–10 (2007), means a sentence is necessarily unreasonable if the relevant guideline is not empirically based, or that the presumption of reasonableness should not apply on appeal. *See, e.g., United States v. Duarte*, 569 F.3d 528, 530–31 (5th Cir. 2009); *United States v. Mondragon-Santiago*, 564 F.3d 357, 366–67 (5th Cir. 2009). The government's motions are DENIED and the judgment is AFFIRMED.