

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

No. 17-11233
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 24, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ISAIAH GALBREATH,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:17-CR-87-1

Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Isaiah Galbreath pleaded guilty to conspiracy to possess with intent to distribute methamphetamine. The district court sentenced him below the guidelines range to 300 months of imprisonment, to be followed by 4 years of supervised release. Galbreath challenges the substantive reasonableness of his below-guidelines sentence because U.S.S.G. § 2D1.1 was not formulated using empirical evidence with respect to methamphetamine offenses. The

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Government has filed an unopposed motion for summary affirmance or, alternatively, for an extension of time to file a merits brief.

We have rejected arguments 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 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); *see also United States v. Simpson*, 796 F.3d 548, 557 (5th Cir. 2015). Accordingly, the judgment of the district court is AFFIRMED. The Government's motion for summary affirmance and the alternative motion for an extension of time to file an appellate brief are DENIED.