

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

No. 18-11159
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 3, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

AARON CLAYTON MCVEA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:18-CR-11-1

Before DAVIS, GRAVES, and HO, Circuit Judges.

PER CURIAM:*

Aaron Clayton McVea pleaded guilty to one count of possession with intent to distribute methamphetamine, and the district court sentenced him within the applicable guidelines range to 125 months in prison, to be followed by a three-year term of supervised release. On appeal, McVea argues that his within-guidelines sentence is substantively unreasonable because U.S.S.G. § 2D1.1 was not formulated using empirical evidence with respect to

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 18-11159

methamphetamine offenses. The Government moves for summary affirmance, asserting that the issue is foreclosed by circuit precedent, as McVea has recognized. Alternatively, the Government moves for an extension of time to file an appellate brief.

We have held that *Kimbrough v. United States*, 552 U.S. 85, 109-10 (2007), does not disturb the presumption of reasonableness for guidelines sentences even if the relevant Guideline is not empirically based. *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). Accordingly, the Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED. The Government's alternative motion for an extension of time to file an appellate brief is DENIED as moot.