

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

United States Court of Appeals
Fifth Circuit

FILED

April 21, 2020

Lyle W. Cayce
Clerk

No. 18-11170
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ODINGO ODAK,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:04-CR-194-1

Before HIGGINBOTHAM, HO, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Odingo Odak appeals the sentence imposed following his jury trial conviction for 21 counts of preparing false tax returns, specifically the district court's order that he pay \$73,024 in restitution. He contends that the restitution award violates the Sixth Amendment because the facts supporting it were not found by the jury beyond a reasonable doubt. Odak concedes that the issue is foreclosed in this circuit by *United States v. Rosbottom*, 763 F.3d

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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408, 420 (5th Cir. 2014), in which we held that the Sixth Amendment does not apply to restitution findings, but argues that *Rosbottom*'s reasoning was rejected by *Alleyne v. United States*, 570 U.S. 99 (2013). The Government moves for summary affirmance in light of *Rosbottom* or, alternatively, for an extension of time in which to file a merits brief.

Rosbottom clearly forecloses Odak's appeal of his sentence. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969); see also *United States v. Petras*, 879 F.3d 155, 169 (5th Cir. 2018). Odak points to no "intervening change in the law, such as by a statutory amendment, or the Supreme Court, or our en banc court" overruling or relevantly abrogating *Rosbottom*. *United States v. Quiroga-Hernandez*, 698 F.3d 227, 229 (5th Cir. 2012) (internal quotation marks and citation omitted). Accordingly, the Government's motion for summary affirmance is GRANTED. Its alternative motion for an extension of time is DENIED. The judgment is AFFIRMED.