

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

No. 19-10120
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
October 29, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

TYMAINE AKEEN LEWIS,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:16-CR-514-1

Before WIENER, HAYNES, and COSTA, Circuit Judges.

PER CURIAM:*

Tymaine Akeen Lewis appeals his 188-month sentence for being a felon in possession of a firearm (count one), in violation of 18 U.S.C. § 922(g)(1) and § 924(e), and possession with intent to distribute cocaine (count two), in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C). He argues that the Texas aggravated robbery is indivisible and that Texas aggravated robbery is not categorically a violent felony under the Armed Career Criminal Act (ACCA),

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 19-10120

but he concedes that this issue is foreclosed by *United States v. Burris*, 920 F.3d 942 (5th Cir. 2019), *petition for cert. filed*, Case No. 19-6186 (U.S. Oct. 3, 2019). The Government has moved for summary affirmance or, alternatively, an extension of time to file a brief.

Summary affirmance is appropriate here because “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, 1162-63 (5th Cir. 1969). Lewis’s argument is foreclosed by *Burris*, 920 F.3d at 944-45, and *United States v. Lerma*, 877 F.3d 628, 634-36 (5th Cir. 2017), *cert. denied*, 138 S. Ct. 2585 (2018).

In light of the foregoing, the Government’s motion for summary affirmance is GRANTED, and the judgment is AFFIRMED. The Government’s alternative motion for an extension of time to file a brief is DENIED.