

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

United States Court of Appeals
Fifth Circuit

FILED

February 20, 2020

Lyle W. Cayce
Clerk

No. 19-10655
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MANUEL CONTRERAS SAUCEDO,

Defendant-Appellant

Appeals from the United States District Court
for the Northern District of Texas
USDC No. 3:18-CR-604-1

Before JOLLY, JONES, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Manuel Contreras Saucedo appeals his 36-month, above-guidelines sentence for illegally reentering the United States after removal. Although Contreras Saucedo admitted to only two prior removals, the district court found that he had eight prior removals, and that finding played some part in the sentence selected by the district court. Citing the rule of *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), Contreras Saucedo contends that the district

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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court violated his Fifth and Sixth Amendment rights by basing its sentence on his prior removals. The Government moves for summary affirmance, arguing that Contreras Saucedo’s argument is foreclosed by *United States v. Tuma*, 738 F.3d 681 (5th Cir. 2013), and *United States v. Bazemore*, 839 F.3d 379 (5th Cir. 2016). Contreras Saucedo contends that the Supreme Court’s decision in *Hurst v. Florida*, 136 S. Ct. 616 (2016), calls *Tuma* into question.

Contreras Saucedo correctly concedes that his argument is foreclosed, and he raises it only to preserve the issue for future review. *See Bazemore*, 839 F.3d at 392-93. The Government is “clearly right as a matter of law” such that “there can be no substantial question as to the outcome of the case.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

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 a brief is DENIED.