

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 23, 2021

Lyle W. Cayce
Clerk

No. 20-10959
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MICHAEL DAVID McCALL,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:18-CR-240-1

Before DAVIS, STEWART, and DENNIS, *Circuit Judges.*

PER CURIAM:*

Michael David McCall appeals his 180-month sentence for possession of a firearm by a felon. He argues that his four prior Texas convictions for burglary of a habitation or burglary of a building are not violent felonies under the Armed Career Criminal Act (ACCA), but he concedes that the issue is

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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foreclosed by *United States v. Herrold*, 941 F.3d 173 (5th Cir. 2019) (en banc), *cert. denied*, 141 S. Ct. 273 (2020). The Government has moved for summary affirmance or, alternatively, an extension of time to file a brief.

Summary affirmance is proper where, among other instances, “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 (5th Cir. 1969). In *Herrold*, we held that Texas burglary is generic burglary and constitutes a violent felony under the ACCA. *Herrold*, 941 F.3d at 182. As McCall concedes, his arguments are foreclosed by *Herrold*. Accordingly, summary affirmance is proper. *See Groendyke Transp., Inc.*, 406 F.2d at 1162.

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 as moot.