

United States Court of Appeals for the Fifth Circuit

No. 21-51188
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 8, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JAQUANTIOUS HUTCHISON,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:20-CR-2333-3

Before JONES, HAYNES, and OLDHAM, *Circuit Judges.*

PER CURIAM:*

Jaquantious Hutchison appeals his sentence following his guilty plea conviction for possession with intent to distribute five kilograms or more of cocaine. Relying on the Ninth Circuit's approach in *United States v. Lopez*, 998 F.3d 431 (9th Cir. 2021), he contends that he is eligible for safety valve

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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relief under 18 U.S.C. § 3553(f) and that his statutory minimum sentence of 120 months of imprisonment should be vacated. The Government has filed an opposed motion for summary affirmance or, in the alternative, for an extension of time to file a merits brief.

Now, Hutchison's argument is foreclosed by our recent decision in *United States v. Palomares*, 52 F.4th 640 (5th Cir. 2022), *petition for cert. filed* (U.S. Dec. 21, 2022) (No. 22-6391). Because Hutchison ran afoul of § 3553(f)(1)(A)'s requirement that he not have more than four criminal history points under the guidelines—which he does not dispute—he was ineligible for relief under § 3553(f). *See Palomares*, 52 F.4th at 647. We are not required to follow Hutchison's request that we hold this case in abeyance pending the Supreme Court's grant of certiorari on this issue. *See United States v. Pulsifer*, 39 F.4th 1018, 1021 (8th Cir. 2022), *cert. granted*, 143 S. Ct. 978 (2023) (granting certiorari on this question). *See also United States v. Treft*, 447 F.3d 421, 425 (5th Cir. 2006); *United States v. Islas-Saucedo*, 903 F.3d 512, 521 (5th Cir. 2018).

In light of the foregoing, the judgment of the district court is AFFIRMED. The Government's motion for summary affirmance and alternative motion for an extension of time to file a brief are DENIED. *See United States v. Bailey*, 924 F.3d 1289, 1290 (5th Cir. 2019).