

United States Court of Appeals for the Fifth Circuit

No. 23-30320
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 2, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BRANDON FONTNETT,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:21-CR-177-8

Before WIENER, STEWART, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Defendant–Appellant Brandon Fontnett appeals the 151-month sentence imposed following his guilty-plea conviction for possession with the intent to distribute cocaine. In particular, Fontnett challenges the district court’s use of his prior conviction for attempted possession with intent to distribute cocaine to qualify him as a career offender. As he argued in the

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 23-30320

district court, Fontnett asserts that (1) inchoate offenses are not included in the definition of a “controlled substance offense” under U.S.S.G. § 4B1.2(b) and (2) guidelines commentary to the contrary is not entitled to deference.

The Government has filed an unopposed motion for summary affirmance or, in the alternative, for an extension of time to file its brief. Fontnett correctly concedes that his claim is foreclosed by *United States v. Vargas*, 74 F.4th 673 (5th Cir. 2023) (en banc), *petition for cert. filed* (U.S. Oct. 23, 2023) (No. 23-5875). In that case, we determined that the commentary warranted deference and “reaffirm[ed] our longstanding precedent that inchoate offenses . . . are included in the definition of ‘controlled substance offense.’” *Vargas*, 74 F.4th at 698.

When, as here, “there can be no substantial question as to the outcome of the case,” summary disposition is appropriate. *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). The motion for summary affirmance is GRANTED, the alternative motion for an extension of time is DENIED, and the district court’s judgment is AFFIRMED.