

United States Court of Appeals for the Fifth Circuit

No. 24-10079
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 8, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DOMINIQUE KEVION DRAKE,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:20-CR-188-4

Before JOLLY, GRAVES, and OLDHAM, *Circuit Judges.*

PER CURIAM:*

Dominique Kevion Drake was convicted of conspiracy to interfere with commerce by robbery in violation of the Hobbs Act, 18 U.S.C. § 1951(a), interference with commerce by robbery in violation of § 1951(a) and 18 U.S.C. § 2, brandishing a firearm in furtherance of a crime of violence in violation of 18 U.S.C. §§ 924(c)(1)(A)(ii) and 2, and attempted interference

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

with commerce by robbery in violation of § 1951(a). He was sentenced to a total term of 138 months of imprisonment and three years of supervised release.

On appeal, Drake asserts that § 1951(a) is facially unconstitutional because it does not require proof of a substantial effect on interstate or foreign commerce. He concedes, however, that his argument is foreclosed by *United States v. Robinson*, 119 F.3d 1205, 1212-14 (5th Cir. 1997) and *United States v. Miles*, 122 F.3d 235, 240-41 (5th Cir. 1997), and that he raises this issue merely to preserve it for further review. The Government therefore has filed an unopposed motion for summary affirmance, or alternatively, for an extension of time to file a brief.

Because Drake is correct that his argument is foreclosed, *see United States v. Turner*, 674 F.3d 420, 443-44 & n.88 (5th Cir. 2012), summary affirmance is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). The Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time to file a brief is DENIED, and the district court's judgment is AFFIRMED.