

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

No. 18-11239
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
September 9, 2019
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DATANYA DAMON ALEXANDER,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:17-CR-437-1

Before HIGGINBOTHAM, HO, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Datanya Damon Alexander appeals the concurrent 180-month statutory minimum sentences imposed on his guilty plea convictions for possession of a firearm by a felon. He argues that (1) his three Texas convictions for delivery of a controlled substance are not serious drug offenses for purposes of the Armed Career Criminal Act enhancement, 18 U.S.C. § 924(e), and (2) his indictment did not specify the prior convictions that formed the basis of his

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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sentencing enhancement and he did not admit the facts affecting the range of imprisonment, making his sentences unconstitutional. The Government has filed an unopposed motion for summary affirmance and, alternatively, seeks an extension of time to file its brief.

As the Government argues and Alexander concedes, Alexander's first argument is foreclosed by *United States v. Cain*, 877 F.3d 562, 562-63 (5th Cir. 2017), and *United States v. Vickers*, 540 F.3d 356, 363-66 (5th Cir. 2008), and his second argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 226-27 (1998). Because Alexander's arguments are foreclosed, summary affirmance is proper. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, we GRANT the Government's motion for summary affirmance and AFFIRM the judgment. We DENY, as unnecessary, the Government's alternative motion for an extension of time to file a responsive brief.