

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

No. 18-11318
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 31, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DONIELLE RASHI ROSS,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:15-CR-192-1

Before DAVIS, HAYNES, and GRAVES, Circuit Judges.

PER CURIAM:*

Donielle Rashi Ross appeals the sentence imposed upon resentencing for his convictions for being a felon in possession of a firearm, possession with intent to distribute methamphetamine, and possession of a firearm in furtherance of a drug trafficking crime. Ross argues, as he did in his initial appeal, that the district court erred in classifying his prior assault conviction under Texas Penal Code § 22.01(a)(1) and (b)(2)(B) as a crime of violence for

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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purposes of an enhancement under U.S.S.G. § 2K2.1; however, he concedes that the issue is foreclosed by *United States v. Howell*, 838 F.3d 489 (5th Cir. 2016), as well as the law of the case doctrine, and raises it solely to preserve it for further review. *Howell* held that such an assault offense is a crime of violence under the Sentencing Guidelines. *Howell*, 838 F.3d at 501-03. The Government has moved unopposed for summary affirmance pursuant to *Howell* or, in the alternative, for an extension of time in which to file a responsive brief. The judgment of the district court is AFFIRMED, the Government's motion for summary affirmance is GRANTED, and its alternative motion is DENIED.