

United States Court of Appeals for the Fifth Circuit

No. 23-10977
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 1, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DAMIEN DATRION JOINER,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:23-CR-11-1

Before HIGGINSON, HO, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:*

Damien Datrion Joiner appeals the 57-month sentence imposed following his conviction for possession of a firearm after a felony conviction. He argues that the district court reversibly erred in calculating his advisory guidelines range by classifying his prior conviction under Texas Penal Code § 22.02(a)(2) as the enumerated felony crime of violence offense of

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

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aggravated assault under U.S.S.G. § 2K2.1, which incorporates by reference U.S.S.G. § 4B1.2's definition of a crime of violence. He argues that *Borden v. United States*, 593 U.S. 420 (2021), overruled *United States v. Guillen-Alvarez*, 489 F.3d 197, 200-01 (2007), and that his § 22.02(a)(2) offense therefore no longer qualifies as the enumerated offense of aggravated assault. *Borden*, however, addressed the elements clause of the Armed Career Criminal Act, 18 U.S.C. § 924(e), not the enumerated-offense clause, and is thus distinguishable from both *Guillen-Alvarez* and this case. *See* 593 U.S. at 423-24; 489 F.3d at 200-01. Joiner's challenge fails.

Accordingly, we AFFIRM the judgment and DISMISS as moot the Government's alternative motion for an extension to file its brief.