

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 8, 2021

Lyle W. Cayce
Clerk

No. 20-10494
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

OSCAR DANIEL RIOS BENITEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CR-1-1

Before KING, SMITH, and WILSON, *Circuit Judges.*

PER CURIAM:*

Oscar Daniel Rios Benitez appeals his 18-month, within-guidelines sentence for illegal reentry following deportation. Rios Benitez asserts that the district court plainly erred by characterizing his prior Texas conviction for assault-family violence under TEX. PENAL CODE ANN. § 22.01(a)(1),

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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(b)(2) as a crime of violence under 18 U.S.C. § 16 and, thus, as an aggravated felony pursuant to 8 U.S.C. § 1101(a)(43)(F) and 8 U.S.C. § 1326(b)(2). He contends that Texas assault-family violence does not qualify as an aggravated felony because it can be committed recklessly. The Government moves for summary affirmance, asserting that Rios Benitez’s argument is foreclosed by *United States v. Gracia-Cantu*, 920 F.3d 252 (5th Cir.), *cert. denied*, 140 S. Ct. 157 (2019).

As Rios Benitez correctly concedes, his argument is foreclosed. *See Gracia-Cantu*, 920 F.3d at 253–55 (holding that assault causing bodily injury under TEX. PENAL CODE ANN. § 22.01(a)(1) and (b)(2) is a crime of violence under § 16(a)). He raises the issue only to preserve it for future review. Consequently, the Government is “clearly right as a matter of law,” such that “there can be no substantial question as to the outcome of the case.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, the Government’s motion for summary affirmance is GRANTED, and the district court’s judgment is AFFIRMED. The Government’s alternative motion for an extension of time to file a brief is DENIED AS MOOT.