

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 26, 2021

Lyle W. Cayce
Clerk

No. 20-11238
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DESMOND DELEON CARVIEL,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CR-98-4

Before DAVIS, JONES, and ELROD, *Circuit Judges.*

PER CURIAM:*

Desmond Deleon Carviel appeals the 120-month, below-guidelines sentence of imprisonment imposed following his guilty-plea conviction for conspiracy to commit a violation of 18 U.S.C. § 924(c). Carviel asserts that he was improperly classified as a career offender because his instant

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-11238

conspiracy conviction does not satisfy the definition of a “controlled substance offense” set forth in U.S.S.G. § 4B1.2(b).

He concedes that this argument is foreclosed by *United States v. Lightbourn*, 115 F.3d 291, 292-93 (5th Cir. 1997), but seeks to preserve the issue for further review. The Government agrees and has filed an unopposed motion for summary affirmance and, in the alternative, a motion for an extension of time to file a brief.

The parties are correct that the sole issue is foreclosed by *Lightbourn*. See *United States v. Kendrick*, 980 F.3d 432, 444 (5th Cir. 2020), *cert. denied*, 2021 WL 2637919 (U.S. June 28, 2021) (No. 20-7667). Thus, summary affirmance is appropriate. See *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 judgment of the district court is AFFIRMED. The Government’s alternative motion for an extension of time to file a brief is DENIED AS MOOT.