

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 12, 2021

Lyle W. Cayce
Clerk

No. 20-50023
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

TONY EDWARD POWELL,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:95-CR-4-1

Before HIGGINBOTHAM, JONES, and COSTA, *Circuit Judges.*

PER CURIAM:*

Tony Edward Powell, federal prisoner # 61525-080, has appealed the denial of his motion for resentencing under the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194. Powell contends that the district court misapplied *United States v. Hegwood*, 934 F.3d 414 (5th Cir.), *cert. denied*, 140

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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S. Ct. 285 (2019), in that it believed erroneously that it could not consider the sentencing exposure that Powell or a similarly situated defendant would face if he were sentenced today.

The record does not reflect that the district court's ruling resulted from an erroneous interpretation of the First Step Act of 2018 or *Hegwood*. See *United States v. Batiste*, 980 F.3d 466, 478 (5th Cir. 2020). Rather, "it is more plausible . . . that the district court, having evaluated all pertinent factors, simply exercised its statutory discretion to deny the motion." *Id.* No abuse of discretion has been shown. See *id.* The district court's order is **AFFIRMED**.