

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

April 8, 2021

Lyle W. Cayce  
Clerk

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No. 20-50433  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

ELTON VALLARE,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 5:17-CR-547-1

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Before JOLLY, ELROD, and GRAVES, *Circuit Judges.*

PER CURIAM:\*

Elton Vallare was convicted of two counts of distribution of child pornography, one count of receipt of child pornography, and two counts of possession of child pornography. The district court sentenced him to a total of 240 months of imprisonment and 10 years of supervised release.

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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Vallare contends that his two sentences for possession of child pornography on different devices—a laptop computer and an external hard drive—are multiplicitous. He concedes that this argument is foreclosed by *United States v. Planck*, 493 F.3d 501, 503-05 (5th Cir. 2007), but he seeks to preserve the issue for further review. The Government has filed an unopposed motion for summary affirmance in which it agrees that the issue is foreclosed.

In *Planck*, 493 F.3d at 505, this court held that “[t]hrough different transactions, Planck possessed child pornography in three separate places—a laptop and desktop computer and diskettes—and, therefore, committed three separate crimes,” so the counts were not multiplicitous. Thus, Vallare’s argument is foreclosed, and 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.