

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit  
**FILED**  
September 19, 2022  
Lyle W. Cayce  
Clerk

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No. 21-11240  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

DERRICK TYRONE MOORE,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:21-CR-183-1

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Before DAVIS, SMITH, and DENNIS, *Circuit Judges.*

PER CURIAM:\*

Derrick Tyrone Moore pleaded guilty to possessing a firearm as a convicted felon and was sentenced to 180 months in prison pursuant to the Armed Career Criminal Act (ACCA). He timely appealed and challenges his ACCA-enhanced sentence on two grounds. The Government has filed an

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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unopposed motion for summary affirmance or, in the alternative, for an extension of time to file a merits brief, asserting that Moore's arguments are foreclosed by circuit precedent.

On appeal, Moore renews his argument that the district court erred by treating his prior Texas Penal Code § 30.02 convictions for burglary of a habitation as violent felonies for purposes of the ACCA. In *United States v. Herrold*, 941 F.3d 173, 182 (5th Cir. 2019) (en banc), this court held that Texas burglary is generic burglary and is a violent felony under the ACCA. Moore concedes as much, but he raises the issue here to preserve it for further review.

Moore also contends that the district court erred under the Sixth Amendment by relying on *Shepard*-approved<sup>1</sup> documents to determine that each of his prior burglary convictions occurred on separate occasions for ACCA purposes. The Government correctly argues without opposition that this argument is foreclosed by our precedent. See *United States v. White*, 465 F.3d 250, 254 (5th Cir. 2006).

In light of the foregoing, the Government's unopposed motion for summary affirmance is GRANTED, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), the alternative motion for an extension of time in which to file a brief is DENIED, and the judgment of the district court is AFFIRMED.

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<sup>1</sup> *Shepard v. United States*, 544 U.S. 13 (2005).