

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 28, 2023

No. 22-30701
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BROCK MELANCON,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:19-CR-119-1

Before JONES, SOUTHWICK, and HO, *Circuit Judges.*

PER CURIAM:*

Brock Melancon appeals the sentence imposed following his convictions for drug offenses and possessing a firearm as a felon. He challenges the district court's use of his prior drug conspiracy conviction to qualify him as a career offender, arguing for the first time on appeal that

* Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.

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inchoate offenses are not included in the U.S.S.G. § 4B1.2(b) (2021) definition of a “controlled substance offense” and that the guidelines commentary is not entitled to deference.

He has filed an unopposed motion for summary disposition in which he correctly concedes that his argument is foreclosed by our recent en banc decision in *United States v. Vargas*, 74 F.4th 673, 680-90 (5th Cir. 2023) (en banc), *petition for cert. filed* (U.S. Oct. 23, 2023) (No. 23-5875). Because summary disposition is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Melancon’s motion is GRANTED, and the district court’s judgment is AFFIRMED.