

United States Court of Appeals for the Fifth Circuit

No. 25-20500
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

September 2, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

TALIB SMITH,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CR-252-1

Before WILLETT, DUNCAN, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:*

Talib Smith pleaded guilty to kidnapping and carjacking in violation of 18 U.S.C. §§ 1201(a) and 2119. He argues on appeal that the district court plainly and reversibly erred by counting his two diversionary dispositions from juvenile court as prior sentences and assessing criminal history points under U.S.S.G. § 4A1.1(c). He contends that the error affected his substantial rights and asks this court to exercise its discretion to correct the

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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error. The Government agrees that the district court erred and that resentencing is warranted.

We agree that the district court plainly erred. *See* U.S.S.G. § 4A1.2(f). Because Smith was sentenced under the incorrect advisory guidelines range and the district court was silent as to what it might have done had it considered the correct range, the error affected his substantial rights. *See Molina-Martinez v. United States*, 578 U.S. 189, 201 (2016). We exercise our discretion to correct the error. *See United States v. Stoglin*, 34 F.4th 415, 420-21 (5th Cir. 2022); *see also Rosales-Mireles v. United States*, 585 U.S. 129, 145 (2018).

Accordingly, we VACATE the sentence and REMAND the case for resentencing consistent with this opinion.