

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-51382
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 7, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

KEVIN DAVID PETIT,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:16-CR-144-1

Before KING, ELROD, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Kevin David Petit pleaded guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), and was sentenced to 71 months of imprisonment and three years of supervised release. He argues that the district court plainly erred in determining that his Texas robbery conviction is a crime of violence for purposes of imposing the base offense level in U.S.S.G. § 2K2.1(a)(4)(A). He argues that Texas robbery is not a crime of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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violence because it lacks the requisite element of the use of force. He concedes, however, that this court has already held that Texas robbery is a crime of violence because it meets the generic definition of the enumerated crime-of-violence offense of robbery. *Compare* U.S.S.G. § 4B1.2(a)(1) (force clause), *with* § 4B1.2(a)(2) (enumerated offense clause). Petit therefore raises his argument to preserve it for further review.

The request for relief is foreclosed by *United States v. Santiesteban-Hernandez*, 469 F.3d 376, 380–81 (5th Cir. 2006), *overruled on other grounds* by *United States v. Rodriguez*, 711 F.3d 541, 547–58 (5th Cir. 2013) (en banc), in which we held that robbery in violation of Texas Penal Code § 29.02 meets the generic definition of the enumerated crime-of-violence offense of robbery. Accordingly, the Government’s motion for summary affirmance is GRANTED, the Government’s alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.