

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

No. 18-10670
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 28, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

MATTHEW JASON MILLER,

Defendant–Appellant.

Appeal from the United States District Court
for the Northern District of Texas
No. 4:17-CR-260-1

Before SMITH, WIENER, and WILLETT, Circuit Judges.

PER CURIAM:*

Matthew Miller appeals his 84-month below-guidelines sentence for

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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receipt of child pornography in violation of 18 U.S.C. § 2252(a)(2). He contends that the child pornography guidelines, U.S.S.G. § 2G2.2 *et seq.*, lack an empirical basis, so his sentence is unreasonable. He recognizes that this theory is foreclosed by *United States v. Miller*, 665 F.3d 114, 121–22 (5th Cir. 2011), but he raises the issue to preserve it for possible further review.

The government has filed an opposed motion for summary affirmance, agreeing that the issue is foreclosed by *Miller*. Because the parties are correct, summary affirmance is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, the motion for summary affirmance is GRANTED, the government's alternative motion for an extension of time to file its brief is DENIED, and the judgment is AFFIRMED.