

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**F I L E D**  
May 28, 2010

No. 08-10499  
Summary Calendar

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff – Appellee

v.

OWEN DONOVAN POWELL,

Defendant – Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:07-CR-56-ALL

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Before HIGGINBOTHAM, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Appealing the judgment in a criminal case, Owen Donovan Powell presents arguments that he concedes are foreclosed by *United States v. Ford*, 509 F.3d 714, 716-18 (5th Cir. 2007). In *Ford*, this court held that the Texas offense of possession of a controlled substance with intent to deliver was indistinguishable from the offense of possession with intent to distribute, the latter of which is defined under U.S.S.G. § 2K2.1 as a controlled substance offense. 509 F.3d at 716-17. This court held that the district court did not err

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

in enhancing Ford's sentence pursuant to Section 2K2.1(a) based on his prior conviction for possession with intent to deliver a controlled substance. *Id.* The definition of "drug trafficking offense" under Section 2L1.2(b)(1) is nearly identical to that of a "controlled substance offense" under Section 2K2.1. *See id.* at 717 n.2. *Ford*'s holding applies equally to a Section 2L1.2 enhancement. *See id.* Powell's argument is foreclosed by *Ford*.

Accordingly, the Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED. The Government's alternative motion for an extension of time in which to file a brief is DENIED as unnecessary.