

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

United States Court of Appeals
Fifth Circuit

FILED

November 25, 2009

Charles R. Fulbruge III
Clerk

No. 09-10238
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MALIK IDIS HOUSTON,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:08-CR-209-1

Before JOLLY, WIENER, and ELROD, Circuit Judges.

PER CURIAM:*

Malik Idis Houston appeals from his conviction of conspiracy and using, carrying, and brandishing a firearm. He contends that he was deprived of his right to indictment by a grand jury because the elemental facts required to support a conviction based on the actions of a coconspirator, pursuant to *Pinkerton v. United States*, 328 U.S. 640 (1946), were not presented to a grand

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

jury and included in the superseding indictment. The Government moves for dismissal of Houston's appeal or for summary affirmance.

Houston's contention is foreclosed. *See United States v. Creech*, 408 F.3d 264, 273 (5th Cir. 2005).

AFFIRMED. MOTION FOR DISMISSAL OR SUMMARY AFFIRMANCE DENIED.