

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

United States Court of Appeals
Fifth Circuit

F I L E D

December 15, 2010

No. 10-10312
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ASHLEA DANIELLE BROWN,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
No. 4:09-CR-151-1

Before DAVIS, SMITH, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Ashlea Brown appeals the 37-month sentence imposed following her guilty plea conviction of bank robbery. She argues that the district court lacked the

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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authority to order that her sentence be served consecutively to state court sentences that had not yet been imposed, but she concedes that the issue is foreclosed by *United States v. Brown*, 920 F.2d 1212, 1216-17 (5th Cir.1991), *abrogated on other grounds*, *United States v. Candia*, 454 F.3d 468, 472-73 (5th Cir. 2006). The government moves to dismiss the appeal based on the appeal waiver provision in Brown's plea agreement or, under *Brown*, for summary affirmance. The government alternatively moves for an extension of time to file a brief.

Contrary to Brown's argument, she is not entitled to appeal based on the exception to her waiver for appeals of sentences exceeding the statutory maximum, because her sentence did not exceed the statutory maximum term of 20 years. *See* 18 U.S.C. § 2113(a); *United States v. Cortez*, 413 F.3d 502, 503 (5th Cir. 2005). Thus, we do not address the merits of Brown's challenge to her sentence.

Because Brown's appeal is barred by her appeal waiver, the motion to dismiss the appeal is GRANTED, and the appeal is DISMISSED. The motions for summary affirmance and for an extension of time to file a brief are DENIED as unnecessary.