

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

February 17, 2012

Lyle W. Cayce
Clerk

No. 11-10417
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

BRIAN KEITH WARREN,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:10-CR-253-1

Before HIGGINBOTHAM, GARZA, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Appealing the judgment in a criminal case, Brian Keith Warren contends that the district court erred by relying on U.S.S.G. § 2G2.2 at sentencing because that provision was not the result of the Sentencing Commission's application of its own expertise and because it is not supported by empirical evidence. He concedes that this argument has been rejected as to other guideline sentencing provisions. *See United States v. Duarte*, 569 F.3d 528, 530 (5th Cir. 2009). His argument is foreclosed by *United States v. Miller*, 665 F.3d 114, ___, 2011 WL

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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6160220, **3-7 (5th Cir. 2011). Accordingly, the Government's motion for summary affirmance is GRANTED, its alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.