

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

United States Court of Appeals
Fifth Circuit

FILED

October 16, 2012

Lyle W. Cayce
Clerk

No. 12-10286
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ARTURO GUTIERREZ-RODRIGUEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:11-CR-9-1

Before HIGGINBOTHAM, SMITH, and HAYNES, Circuit Judges.

PER CURIAM:*

Appealing the judgment in a criminal case, Arturo Gutierrez-Rodriguez raises arguments that he concedes are foreclosed by *United States v. Newson*, 515 F.3d 374, 377-78 (5th Cir. 2008), which held that the Government may decline to move for an additional one-point reduction under United States Sentencing Guidelines § 3E1.1(b) based on the defendant's refusal to waive his right to appeal. Gutierrez-Rodriguez further concedes that his remaining arguments are foreclosed as this court has repeatedly held that a sentencing

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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judge may find by a preponderance of the evidence all the facts necessary to the determination of a sentencing guidelines range. *See, e.g., United States v. Rhine*, 583 F.3d 878, 891 (5th Cir. 2009); *United States v. Stevens*, 487 F.3d 232, 246 (5th Cir. 2007); *United States v. Johnson*, 445 F.3d 793, 798 (5th Cir. 2006). The Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.