

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

No. 16-11228
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 19, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOE GUZMAN, also known as Mike S. Aguirre,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:16-CR-27-1

Before WIENER, DENNIS, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Joe Guzman has appealed the within-Guideline sentence for his conviction of possession with intent to distribute 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, in violation of 21 U.S.C. § 841(a)(1) & (b)(1)(B). Guzman has filed a motion for summary disposition. He asserts that his sole argument on appeal is foreclosed by precedent of this court, yet he seeks to preserve the issue for possible review

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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by the United States Supreme Court. According to Guzman, the applicable drug quantity Guideline in his case, U.S.S.G. § 2D1.1, gave rise to a substantively unreasonable sentence insofar as its treatment of methamphetamine offenses “does not reflect the Sentencing Commission’s institutional expertise or its empirical analysis.”

Guzman is correct that his argument is foreclosed. We have held that *Kimbrough v. United States*, 552 U.S. 85, 109-10 (2007), does not disturb the presumption of reasonableness for Guidelines sentences even if the appropriate Guideline is not empirically based. See *United States v. Duarte*, 569 F.3d 528, 530–31 (5th Cir. 2009); *United States v. Mondragon-Santiago*, 564 F.3d 357, 366–67 (5th Cir. 2009). Because Guzman’s argument is foreclosed, his motion for summary disposition is GRANTED. The district court’s judgment is AFFIRMED.