

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

No. 16-11443
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 2, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DONIELLE RASHI ROSS,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:15-CR-192-1

Before JOLLY, SMITH, and GRAVES, Circuit Judges.

PER CURIAM:*

Donielle Rashi Ross appeals the sentence imposed pursuant to his convictions for being a felon in possession of a firearm, possession with intent to distribute a controlled substance, and possession of a firearm in furtherance of a drug trafficking offense. Ross argues that the district court erred in classifying his prior assault conviction under Texas Penal Code § 22.01(a)(1) and (b)(2)(B) as a “crime of violence” for purposes of a U.S.S.G. § 2K2.1(a)(4)(A)

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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enhancement; however, he concedes that the issue is foreclosed by *United States v. Howell*, 838 F.3d 489, 501-03 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 1108 (2017), and raises it solely to preserve its further review. *Howell* held that the offense of assault under Texas Penal Code § 22.01(a)(1) and (b)(2)(B) is a crime of violence under the Sentencing Guidelines. 838 F.3d at 501-03. The Government has moved unopposed and pursuant to *Howell* for summary affirmance or, in the alternative, for an extension of time in which to file a responsive brief. The Government's motion for summary affirmance is GRANTED, and its alternative motion is DENIED.

AFFIRMED.