

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

No. 16-11790
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 16, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LEE FOGLE,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:16-CR-132-4

Before JOLLY, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:*

Lee Fogle appeals the 250-month sentence imposed following his guilty plea conviction for conspiracy to possess with the intent to distribute 50 grams or more of methamphetamine. He challenges the district court's application of the two-level enhancement pursuant to U.S.S.G. § 2D1.1(b)(5) for importation of methamphetamine, arguing that the Guideline requires a mens rea and that there was no evidence he knew the methamphetamine was imported. 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

No. 16-11790

Government has moved for summary affirmance in lieu of filing an appellate brief or, alternatively, an extension of time to file a brief.

Fogle’s sole argument on appeal is foreclosed by the decision in *United States v. Serfass*, 684 F.3d 548, 552 (5th Cir. 2012), which held that the § 2D1.1(b)(5) enhancement applies “regardless of whether the defendant had knowledge of that importation.” Accordingly, 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.