

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

No. 17-10199
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 27, 2018

UNITED STATES OF AMERICA,

Lyle W. Cayce
Clerk

Plaintiff - Appellant

v.

DOMINIC LADALE WALTON,

Defendant - Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:15-CR-364-1

Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Dominic Ladale Walton received a 24-month sentence following his guilty plea conviction for felon in possession of a firearm. The district court sustained Walton's objection to the application of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), based on his three prior convictions for burglary of a habitation, violations of Texas Penal Code § 30.02(a)(1). The Government timely appealed.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Upon motion by the Government, this case was held in abeyance pending a decision in *United States v. Herrold*, 883 F.3d 517 (5th Cir. 2018) (en banc), *petition for cert. filed* (Apr. 18, 2018) (No. 17-1445). *Herrold* has now issued and, as the Government concedes, the district court did not err in determining that Walton's three prior convictions for burglary of a habitation, in violation of Texas Penal Code § 30.02(a)(1), could not serve as predicate offenses under the ACCA. *See Herrold*, 883 F.3d at 541. Accordingly, the judgment of the district court is AFFIRMED.