

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

No. 17-11535
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 3, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LUIS DELPRADO,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:17-CR-233-1

Before JOLLY, HIGGINSON, and COSTA, Circuit Judges.

PER CURIAM:*

Luis Delprado pleaded guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) and was sentenced to 51 months of imprisonment to be followed by three years of supervised release. He argues that the district court plainly erred in determining that his Texas aggravated robbery conviction is a crime of violence as defined in U.S.S.G. § 4B1.2 for purposes of determining his base offense level under U.S.S.G.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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§ 2K2.1(a)(4)(A). Delprado asserts that the offense of Texas robbery is broader than the generic definition of robbery and does not have the use of force as an element of the offense.

The Government has filed an unopposed motion for summary affirmance, asserting that the argument is foreclosed. Delprado correctly concedes that his argument is foreclosed by *United States v. Santiesteban-Hernandez*, 469 F.3d 376, 380-81 (5th Cir. 2006), *overruled on other grounds* by *United States v. Rodriguez*, 711 F.3d 541, 547-63 (5th Cir. 2013) (en banc). He raises the issue only to preserve it for further review; thus, summary affirmance is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

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.