

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 18, 2020

Lyle W. Cayce
Clerk

No. 19-50948
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DEJON OVERTON,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:17-CR-242-1

Before WIENER, SOUTHWICK, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

Dejon Overton was convicted of conspiracy to possess with intent to distribute 28 grams or more of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B), and 846, and possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c). He was

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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sentenced to a total term of 144 months of imprisonment and five years of supervised release. The sole issue raised on appeal is whether Overton's § 924(c) conviction should be vacated in light of *United States v. Davis*, 903 F.3d 483 (5th Cir. 2018), *affirmed in part and vacated in part*, 139 S. Ct. 2319 (2019), and *United States v. Gore*, 636 F.3d 728 (5th Cir. 2011).

Overton was convicted of possession of a firearm in furtherance of a drug trafficking crime rather than possession of a firearm in furtherance of a crime of violence (COV). His drug trafficking conspiracy conviction is a predicate drug trafficking crime for his § 924(c) conviction. *See United States v. Chapman*, 851 F.3d 363, 370, 375 (5th Cir. 2017) (holding that a conspiracy to distribute and possess with intent to distribute controlled substances, in violation of § 846, is a predicate drug trafficking offense for purposes of § 924(c)(1)(A)). The rationale of *Davis*—holding that the COV definition in § 924(c)(3)(B)'s residual clause was unconstitutionally vague, 139 S. Ct. at 2325-26, 2336—is inapplicable to a conviction, like Overton's, under the drug trafficking element of § 924(c).

Accordingly, the judgment of the district court is AFFIRMED. Overton's motion for summary disposition is DENIED.