

United States Court of Appeals
for the Fifth Circuit

No. 22-30112
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 9, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ANDRE ZENO,

Defendant—Appellant.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:19-CR-135-1

Before SMITH, SOUTHWICK, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Andre Zeno appeals the 60-month sentence imposed for possession with intent to distribute cocaine. Zeno posits that the district court reversibly erred by not departing below the statutory mandatory minimum based on the safety-valve provision of 18 U.S.C. § 3553(f); he urges that the word “and” in § 3553(f)(1) should be interpreted to mean that a defendant is ineligible for safety-valve relief only if all three disqualifying conditions apply and, based

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 22-30112

on that interpretation, that he is eligible for relief because he does not have a prior three-point offense under § 3553(f)(1)(B).

The government has filed an unopposed motion for summary affirmance, or, alternatively, for an extension of time to file its brief. The government correctly asserts that the issue is foreclosed by *United States v. Palomares*, 52 F.4th 640 (5th Cir. 2022), *petition for cert. filed* (U.S. Dec. 21, 2022) (No. 22-6391), which was decided while this appeal was pending. In *Palomares*, the majority used a “distributive approach” to interpret § 3553(f)(1) and concluded that criminal defendants are “ineligible for safety valve relief under § 3553(f)(1) if they run afoul of any one of its requirements.” *Palomares*, 52 F.4th at 647.

Because the government’s position “is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case,” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), summary affirmance is proper. Accordingly, the motion for summary affirmance is GRANTED, and the judgment is AFFIRMED. The government’s alternative motion for an extension of time is DENIED as moot.