

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ANTONIA JANAI HICKMON,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

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Appendix A Judgment and Opinion of Fifth Circuit

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Northern District of Texas

APPENDIX A

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 7, 2020

Lyle W. Cayce
Clerk

No. 20-10083
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ANTONIA JANAI HICKMON, *also known as* ANTONIA JANAI SMITH,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-267-1

Before CLEMENT, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Antonia Janai Hickmon appeals her 36-month, below-guidelines range sentence for bank robbery. Hickmon contends that the district court committed plain error by predicating its application of a guidelines enhancement for making a death threat, *see* U.S.S.G. § 2B3.1(b)(2)(F), on

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

facts it found by a preponderance of the evidence, in violation of *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The Government moves for summary affirmance or, alternatively, for an extension of time to file a merits brief, arguing that Hickmon's appeal of her sentence is foreclosed by *United States v. Bazemore*, 839 F.3d 379 (5th Cir. 2016). Hickmon concurs that *Bazemore* forecloses relief.

We disagree that *Bazemore* forecloses Hickmon's appeal. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, we deny the motion for summary affirmance. Nonetheless, we conclude, without the need for further briefing, that Hickmon has failed to demonstrate clear or obvious sentencing error. See *Puckett v. United States*, 556 U.S. 129, 135 (2009); *United States v. Mudekunye*, 646 F.3d 281, 289 (5th Cir. 2011). We therefore deny the Government's alternate motion for an extension of time to file a merits brief and affirm the judgment.

There was no error, plain or otherwise, because the district court's factfinding increased only Hickmon's guidelines range; it neither changed the statutory maximum sentence nor resulted in a new or increased statutory minimum sentence. Cf. *Apprendi*, 530 U.S. at 476, 478, 487-90; *Hurst v. Florida*, 136 S. Ct. 616, 619-24 (2016); *Alleyne v. United States*, 570 U.S. 99, 107-09, 114 (2013); *United States v. Tuma*, 738 F.3d 681, 693 (5th Cir. 2013); see *Bazemore*, 839 F.3d at 393 & n.9.

The Government's motion for summary affirmance is DENIED. The Government's alternate motion for an extension of time to file a merits brief is DENIED. The judgment is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v. Case Number: 4:19-CR-00267-O(01)
U.S. Marshal's No.: 59204-177
ANTONIA JANAI HICKMON John Bradford, Assistant U.S. Attorney
John Stickney, Attorney for the Defendant

On October 7, 2019 the defendant, ANTONIA JANAI HICKMON, entered a plea of guilty as to Count One of the Indictment filed on September 18, 2019. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

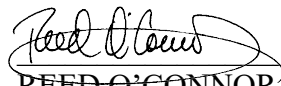
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2113(a)	Bank Robbery	8/21/2019	One

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Indictment filed on September 18, 2019.

The defendant shall notify the United States Attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed January 13, 2020.



REED O'CONNOR
U.S. DISTRICT JUDGE

Signed January 13, 2020.

Judgment in a Criminal Case
Defendant: ANTONIA JANAI HICKMON
Case Number: 4:19-CR-00267-O(1)

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IMPRISONMENT

The defendant, ANTONIA JANAI HICKMON, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **THIRTY-SIX (36) months** as to Count One of the Indictment filed on September 18, 2019.

The defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **THREE (3) years** as to Count One of the Indictment filed on September 18, 2019.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court; and,
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

Judgment in a Criminal Case
Defendant: ANTONIA JANAI HICKMON
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In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

report in person to the U.S. Probation Office in the district to which the defendant is released from the custody of the Federal Bureau of Prisons within 72 hours of release;

refrain from any unlawful use of a controlled substance. The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court;

participate in a program (inpatient and/or outpatient) approved by the U.S. Probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall abstain from the use of alcohol and/or all other intoxicants during and after completion of treatment. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$10 per month;

participate in mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$20 per month; and,

provide to the probation officer any requested financial information.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

Judgment in a Criminal Case
Defendant: ANTONIA JANAI HICKMON
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RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States Marshal

BY _____
Deputy Marshal