

Appendix

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 8, 2021

Lyle W. Cayce
Clerk

No. 20-50433
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ELTON VALLARE,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:17-CR-547-1

Before JOLLY, ELROD, and GRAVES, *Circuit Judges*.

PER CURIAM:*

Elton Vallare was convicted of two counts of distribution of child pornography, one count of receipt of child pornography, and two counts of possession of child pornography. The district court sentenced him to a total of 240 months of imprisonment and 10 years of supervised release.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-50433

Vallare contends that his two sentences for possession of child pornography on different devices—a laptop computer and an external hard drive—are multiplicitous. He concedes that this argument is foreclosed by *United States v. Planck*, 493 F.3d 501, 503-05 (5th Cir. 2007), but he seeks to preserve the issue for further review. The Government has filed an unopposed motion for summary affirmance in which it agrees that the issue is foreclosed.

In *Planck*, 493 F.3d at 505, this court held that “[t]hrough different transactions, Planck possessed child pornography in three separate places—a laptop and desktop computer and diskettes—and, therefore, committed three separate crimes,” so the counts were not multiplicitous. Thus, Vallare’s argument is foreclosed, and 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, and the judgment of the district court is AFFIRMED.