

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

TERROL DEBAUN TRAVIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

/s/ Adam Nicholson

JASON HAWKINS
Federal Public Defender
Northern District of Texas
TX State Bar No. 00759763
525 Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
(214) 767-2886 Fax

Adam Nicholson **
Assistant Federal Public Defender
Northern District of Texas
TX State Bar No. 24097045
525 S. Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
(214) 767-2886

INDEX TO APPENDICES

Appendix A *United States v. Travis*, No. 20-10408, 2021 WL 6140251 (5th Cir. Dec. 29, 2021), Court of Appeals for the Fifth Circuit. Judgment affirmed on December 29, 2021.

Appendix B *Terrol Debaun Travis v. United States*, No. 20-7974 (Oct. 4, 2021). Order granting petition for writ of certiorari, vacating the opinion of the Court of Appeals for the 5th Circuit, and remanding for consideration in light of *Borden v. United States*, 593 U.S. ____ (2021), issued October 4, 2021.

Appendix C *United States v. Travis*, 830 F. App'x 444 (5th Cir. Dec. 1, 2020), CA No. 20-10408. Judgment affirmed December 1, 2020.

Appendix D *United States v. Travis*, 4:19-CR-270-1, United States District Court for the Northern District of Texas. Judgment and sentence entered on Judgment entered April 17, 2020.

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 20-10408

United States Court of Appeals
Fifth Circuit

FILED

December 29, 2021

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

TERROL DEBAUN TRAVIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-270-1

Before HIGGINBOTHAM, JONES, and COSTA, *Circuit Judges.*

J U D G M E N T
ON REMAND FROM THE SUPREME COURT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

United States Court of Appeals
for the Fifth Circuit

No. 20-10408

United States Court of Appeals
Fifth Circuit

FILED

December 29, 2021

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

TERROL DEBAUN TRAVIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-cr-270-1

ON REMAND FROM THE SUPREME COURT

Before HIGGINBOTHAM, JONES, and COSTA, *Circuit Judges.*

PER CURIAM:*

Terrol Travis was sentenced under the Armed Career Criminal Act. That law applies to felons unlawfully possessing firearms who have three convictions that count as a “violent felony” or “serious drug offense.” 18

* 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. 20-10408

U.S.C. § 924(e). We summarily affirmed the judgment, treating as qualifying offenses Travis’s two Texas convictions for possession with intent to deliver cocaine and a Texas conviction for aggravated assault with a deadly weapon. 830 F. App’x 444 (5th Cir. 2020). Travis argued that the aggravated assault conviction was not a “violent felony” because that offense can be committed with a *mens rea* of recklessness and does not require the use, attempted use, or threatened use of force. Travis recognized, however, that our precedent foreclosed this argument, *See United States v. Torres*, 923 F.3d 425-26 (5th Cir. 2019), as well as his claim that the drug convictions were not “serious drug offenses.”

Seeking to overrule that precedent, Travis filed a petition for certiorari raising two questions. SUP. CT. No. 20-7974. The first related to the classification of his drug convictions. The second asked whether his aggravated assault conviction qualified as a “violent felony” even though it required only a reckless mental state. *Id.* While Travis’s petition was pending, the Supreme Court answered the second question in *Borden v. United States*, 141 S. Ct. 1817 (2021). *Borden* held that “[o]ffenses with a *mens rea* of recklessness do not qualify as violent felonies under” the Armed Career Criminal Act. *Id.* at 1834. Citing *Borden*, the Supreme Court later granted Travis’s petition and remanded the case to our court for reconsideration. *See* 142 S. Ct. 58 (Oct. 4, 2021).

It turns out, however, that application of the Armed Career Criminal Act does not depend on Travis’s aggravated assault conviction. Recall he has the two drug offenses. While Travis continues to argue that our precedent is incorrect in classifying those as “serious drug offenses,” he recognizes that *Borden* does not undermine our precedent on this issue. *See United States v. Vickers*, 540 F.3d 356, 366 (5th Cir. 2008) (holding that the Texas offense of delivering a controlled substance by offering for sale qualifies as a “serious drug offense”). He thus has two convictions for “serious drug offenses.”

No. 20-10408

Travis's third qualifying conviction is one we did not mention in our earlier ruling but that the district court relied on at sentencing: a 2002 Texas arson conviction. Arson is an enumerated "violent felony" under the Armed Career Criminal Act. *See* 28 U.S.C. § 924(e)(2)(B)(ii); *see also United States v. Velez-Alderete*, 569 F.3d 541, 546 (5th Cir. 2009) (recognizing for purposes of a Sentencing Guidelines provision that the "Texas arson statute falls under the generic, contemporary meaning of arson"). As Travis again concedes, *Borden* does not affect the classification of the arson conviction.

Consequently, even disregarding the aggravated assault conviction, Travis has three convictions that qualify as Armed Career Criminal Act predicates. Therefore, the judgment is AFFIRMED.

APPENDIX B

Supreme Court of the United States

No. 20-7974

TERROL DEBAUN TRAVIS,

Petitioner

v.

UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Fifth Circuit.

THIS CAUSE having been submitted on the petition for writ of certiorari and the response thereto.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the motion of petitioner for leave to proceed *in forma pauperis* and the petition for writ of certiorari are granted. The judgment of the above court in this cause is vacated, and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *Borden v. United States*, 593 U. S. ___ (2021).

October 4, 2021



APPENDIX C

United States Court of Appeals for the Fifth Circuit

No. 20-10408
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 1, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

TERROL DEBAUN TRAVIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-270-1

Before HIGGINBOTHAM, JONES, and COSTA, *Circuit Judges.*

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 1, 2020

No. 20-10408
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

TERROL DEBAUN TRAVIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-270-1

Before HIGGINBOTHAM, JONES, and COSTA, *Circuit Judges.*

PER CURIAM:*

Terrol Debaun Travis appeals the sentence imposed after his guilty plea conviction for possession of a firearm by a felon. He maintains that the district court erred by applying the provisions of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), and imposing enhanced punishment. He

* 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. 20-10408

contends that, for purposes of the ACCA, his prior convictions in Texas for possession with intent to deliver a controlled substance and for aggravated assault with a deadly weapon do not constitute predicate offenses.

Travis asserts that his conviction in Texas for possession with intent to deliver a controlled substance does not qualify as a “serious drug offense” under the ACCA because the statute of conviction can be violated by an offer to sell. However, as he admits, his claim is foreclosed. *See United States v. Cain*, 877 F.3d 562, 562-563 (5th Cir. 2017); *United States v. Vickers*, 540 F.3d 356, 364-65 (5th Cir. 2008).

He also argues that his conviction in Texas for aggravated assault with a deadly weapon is not a “violent felony” under the ACCA because the crime can be committed with a mens rea of recklessness and does not require the use, attempted use, or threatened use of physical force. His challenge, as he acknowledges, is foreclosed. *See United States v. Torres*, 923 F.3d 420, 425-26 (5th Cir. 2019); *United States v. Gracia-Cantu*, 920 F.3d 252, 253-54 (5th Cir.), *cert. denied*, 140 S. Ct. 157 (2019); *United States v. Gomez Gomez*, 917 F.3d 332, 333-34 (5th Cir. 2019), *petition for cert. filed* (U.S. July 19, 2019) (No. 19-5325).

The Government has filed an unopposed motion for summary affirmance and, alternatively, requests an extension of time to file its brief. Because the issues presented on appeal are foreclosed, summary affirmance is proper. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Thus, 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.

APPENDIX D

APR 17 2020

CLERK, U.S. DISTRICT COURT

By _____ Deputy

Case Number: 4:19-CR-270-A(01)

UNITED STATES OF AMERICA

§

v.

§

TERROL DEBAUN TRAVIS

§

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney Michael Levi Thomas. The defendant, TERROL DEBAUN TRAVIS, was represented by Federal Public Defender through Assistant Federal Public Defender George Howard Lancaster, Jr.

The defendant pleaded guilty on November 1, 2019 to the one count Indictment filed on September 18, 2019. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

<u>Title & Section / Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1), and 924(a)(2) and (e) Felon in Possession of Firearm	July 9, 2019	1

As pronounced and imposed on April 17, 2020, the defendant is sentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 262 months. This sentence shall be served consecutively to any unserved sentences in Case Nos. 1567306D, 1567309D and 1567737D in the 372nd Judicial District Court, Tarrant County, Texas, Case Nos. 0864580D; 0904227D; 0904230D; 0904226D; 0921347D in the 213th Judicial District Court, Tarrant County, Texas, and Case No. 1322926D in the Criminal District Court No. 3 of Tarrant County, Texas. This sentence shall be served concurrently with any unserved sentence imposed in Case No. 1608014D in the 372nd Judicial District Court, Tarrant County, Texas.

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

SUPERVISED RELEASE

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years and that while on supervised release, the defendant shall comply with the following conditions of supervised release:

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not unlawfully possess a controlled substance.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. The defendant shall refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill.
5. The defendant shall participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered at the rate of at least \$25 per month.
6. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district where the defendant is being supervised without the permission of the Court or U.S. Probation Officer.
5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.

6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support his dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall 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.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. The defendant shall 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.
16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by 18 U.S.C. § 3583(f).

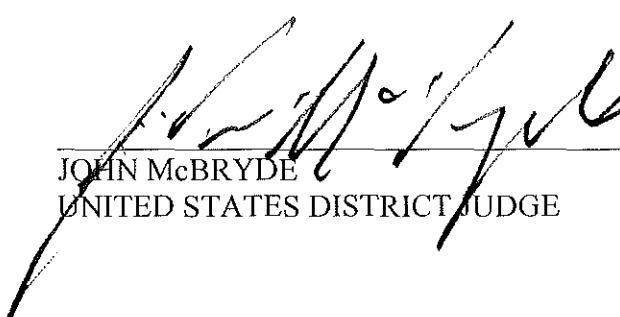
FINE

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 17th day of April, 2020.


JOHN McBRYDE
UNITED STATES DISTRICT JUDGE

RETURN

I have executed the imprisonment part of this Judgment as follows:

Defendant delivered on _____, 2020 to _____
at _____, with a certified copy of this Judgment.

United States Marshal for the
Northern District of Texas

By _____
Deputy United States Marshal