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United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 26, 2021

No. 20-11238
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DESMOND DELEON CARVIEL,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CR-98-4

Before DAVIS, JONES, and ELROD, *Circuit Judges.*

PER CURIAM:*

Desmond Deleon Carviel appeals the 120-month, below-guidelines sentence of imprisonment imposed following his guilty-plea conviction for conspiracy to commit a violation of 18 U.S.C. § 924(c). Carviel asserts that he was improperly classified as a career offender because his instant

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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. 20-11238

conspiracy conviction does not satisfy the definition of a “controlled substance offense” set forth in U.S.S.G. § 4B1.2(b).

He concedes that this argument is foreclosed by *United States v. Lightbourn*, 115 F.3d 291, 292-93 (5th Cir. 1997), but seeks to preserve the issue for further review. The Government agrees and has filed an unopposed motion for summary affirmance and, in the alternative, a motion for an extension of time to file a brief.

The parties are correct that the sole issue is foreclosed by *Lightbourn*. See *United States v. Kendrick*, 980 F.3d 432, 444 (5th Cir. 2020), *cert. denied*, 2021 WL 2637919 (U.S. June 28, 2021) (No. 20-7667). Thus, 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. The Government’s alternative motion for an extension of time to file a brief is DENIED AS MOOT.

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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.



Certified as a true copy and issued
as the mandate on Jan 19, 2022

Attest:

Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 19, 2022

Ms. Karen S. Mitchell
Northern District of Texas, Fort Worth
United States District Court
501 W. 10th Street
Room 310
Fort Worth, TX 76102

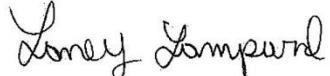
No. 20-11238 USA v. Carviel
USDC No. 4:20-CR-98-4

Dear Ms. Mitchell,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk



By: Laney L. Lampard, Deputy Clerk
504-310-7652

CC:

Mr. Brian W. McKay
Ms. Leigha Amy Simonton
Mr. Harry Eugene White

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United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 11, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 20-11238 USA v. Carviel
USDC No. 4:20-CR-98-4

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Melissa Mattingly

By: Melissa V. Mattingly, Deputy Clerk
504-310-7719

Mr. Brian W. McKay
Ms. Leigha Amy Simonton
Mr. Harry Eugene White

United States Court of Appeals for the Fifth Circuit

No. 20-11238

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DESMOND DELEON CARVIEL,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CR-98-4

ON PETITION FOR REHEARING EN BANC

Before DAVIS, JONES, and ELROD, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

DESMOND DELEON CARVIEL

Case Number: 4:20-CR-098-Y(4)

Aisha Saleem, assistant U.S. attorney

Harry E. White, attorney for the defendant

On July 8, 2020, the defendant, Desmond Deleon Carviel, entered a plea of guilty to count one of the one-count indictment. 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 CONCLUDED</u>	<u>COUNT</u>
18 U.S.C. § 924(o)	Conspiracy to Commit a Violation of 18 U.S.C. § 924(c)	September 30, 2019	1

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

The defendant shall pay immediately a special assessment of \$100.00 for count one of the one-count indictment.

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 December 8, 2020.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed December 9, 2020.

Judgment in a Criminal Case

Defendant: Desmond Deleon Carviel

Case Number: 4:20-CR-098-Y(4)

Judgment -- Page 2 of 3

IMPRISONMENT

The defendant, Desmond Deleon Carviel, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 120 months on count one of the one-count indictment. This sentence shall run consecutively to any future sentence that may be imposed in case nos. 1575063 and 1615011, Tarrant County, Texas, Criminal Court No. 6.

The Court recommends that the defendant be incarcerated within the Northern District of Texas, if possible.

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 3 years on count one of the one-count indictment.

The defendant, while on supervised release, shall comply with the standard conditions recommended by the U. S. Sentencing Commission at §5D1.3(c) of the United States Sentencing Commission Guidelines Manual, and 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, as authorized by the Justice for All Act of 2004;

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

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 mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered (copayment) at a rate of at least \$25 per month; and

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 (copayment) at the rate of at least \$25 per month.

The probation officer shall provide the defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as required.

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.

RETURN

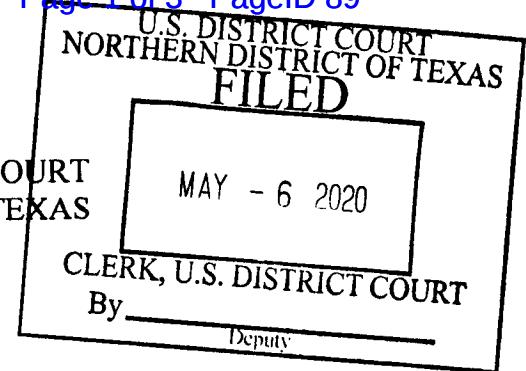
I have executed this judgment as follows:

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

United States marshal

BY _____
deputy marshal

A 4



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA

v.

JAYONTAE ANICIA ALLEN	(01)
TORRENCE CHRISTOPHER THOMAS	(02)
SALAHUDDIN RASUZ MALDONADO	(03)
DESMOND DELEON CARVIEL	(04)

Case No.

4- 20CR-098-Y

INDICTMENT

The Grand Jury Charges:

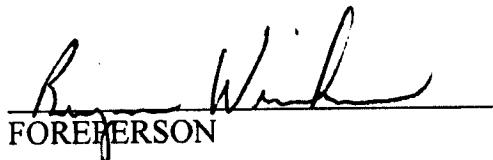
Count One

Conspiracy to Commit a Violation of 18 U.S.C. § 924(c)
(Violation of 18 U.S.C. § 924(o))

Beginning in or before March 2018, and continuing until in or around September 2019, in the Fort Worth Division of the Northern District of Texas, and elsewhere, defendants **Jayontae Anicia Allen, Torrence Christopher Thomas, Salahuddin Rasuz Maldonado and Desmond Deleon Carviel**, along with others known and unknown, did knowingly and intentionally combine, conspire, confederate, and agree to engage in conduct in violation of 18 U.S.C. § 924(c), namely to knowingly possess firearms in furtherance of drug trafficking crimes which may be prosecuted in a court of the United States, that is, conspiracy to possess a controlled substance with intent to distribute.

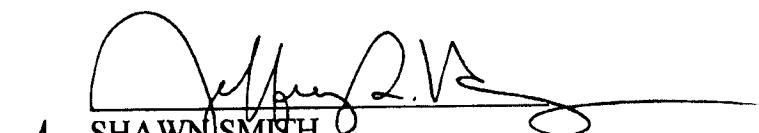
In violation of 18 U.S.C. § 924(o).

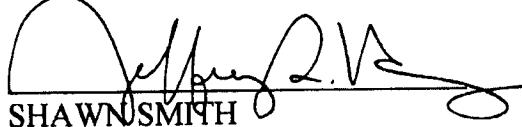
A TRUE BILL.



Foreperson

ERIN NEALY COX
UNITED STATES ATTORNEY



for 
SHAWN SMITH
Assistant United States Attorney
Texas State Bar No. 24033206
801 Cherry Street, Suite 1700
Fort Worth, Texas 76102
Telephone: 817.252.5200
Facsimile: 817.252.5455

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

THE UNITED STATES OF AMERICA

v.

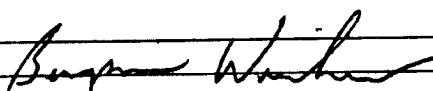
JAYONTAE ANICIA ALLEN (01)
TORRENCE CHRISTOPHER THOMAS (02)
SALAHUDDIN RASUZ MALDONADO (03)
DESMOND DELEON CARVIEL (04)

INDICTMENT

18 U.S.C. § 924(o)
Conspiracy to Commit a Violation of 18 U.S.C. § 924(c)
1 Count

A true bill rendered

AMARILLO



FOREPERSON

Filed in open court this 6th day of May, 2020.

Defendant Allen (01) and Carviel (04) in Federal Custody since 01/29/2020;
Defendant Thomas (02) in Federal Custody since 04/22/2020. Warrant to Issue on
Defendant Maldonado (03)


UNITED STATES MAGISTRATE JUDGE
Magistrate Court Number: 4:20-MJ-034-BJ