

PETITION APPENDIX

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APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 11, 2022

Lyle W. Cayce
Clerk

No. 21-10942

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

SHAMAR CORTEZ WOMACK,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:21-CR-50-1

Before JOLLY, WILLETT, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Shamar Cortez Womack was sentenced to 210 months of imprisonment after pleading guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). On appeal, he contends that his Arkansas drug offense does not qualify as a serious drug felony under the Armed Career Criminal Act. The Government has filed a motion for

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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. 21-10942

summary affirmance or, in the alternative, for an extension of time to file a merits brief. It asserts that Womack's argument is foreclosed by circuit precedent.

For a state statute to be broader than its federal counterpart, there must be "a realistic probability, not a theoretical possibility, that the State would apply its statute to conduct that falls outside the generic definition of a crime." *Moncrieffe v. Holder*, 569 U.S. 184, 191 (2013) (quoting *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). As acknowledged by Womack, he cannot make such a showing because he is unable to point to an actual case in which Arkansas courts applied the relevant offense in a nongeneric manner. *See United States v. Castillo-Rivera*, 853 F.3d 218, 222 (5th Cir. 2017) (en banc). Although he claims that this court's application of the realistic probability test is wrong and unfair, "in the absence of an intervening contrary or superseding decision by this court sitting en banc or by the United States Supreme Court," we are bound by our precedent. *United States v. Montgomery*, 974 F.3d 587, 590 n.4 (5th Cir. 2020) (quoting *United States v. Setser*, 607 F.3d 128, 131 (5th Cir. 2010)), *cert. denied*, 141 S. Ct. 2823 (2021).

In light of the foregoing, the Government's motion for summary affirmance is DENIED, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), the alternative motion for an extension of time in which to file a brief is DENIED as moot, and the judgment of the district court 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: 4:21-CR-050-Y(1)

Alex Lewis, assistant U.S. attorney

SHAMAR CORTEZ WOMACK

George H. Lancaster Jr., attorney for the defendant

On May 12, 2021, the defendant, Shamar Cortez Womack, 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. §§ 922(g)(1) and 924(a)(2)	Possession of a Firearm by a Convicted Felon	January 15, 2021	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 September 14, 2021.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed September 16, 2021.

IMPRISONMENT

The defendant, Shamar Cortez Womack, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 210 months on count one of the one-count indictment. This sentence shall run concurrently with any future sentence that may be imposed in case nos. 1672297D in the 372nd Judicial District Court, Tarrant County, Texas; and case no. 1676080 in County Criminal Court No. 8, Tarrant County, Texas.

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 5 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 probation officer, as authorized by the Justice for All Act of 2004;

report in person to the 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 placement on probation and at least two periodic drug tests thereafter, as determined by the Court;

participate in an outpatient 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; and

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.

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.

FORFEITURE

Pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), it is hereby ordered that defendant's interest in the following property is condemned and forfeited to the United States: a HS Produkt, Model Hellcat, 9-millimeter caliber pistol, bearing Serial No. BY280947, and any firearm, magazine, and ammunition involved or used in the commission of the offense.

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

APPENDIX C

United States Court of Appeals
for the Fifth Circuit

No. 21-10942

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

SHAMAR CORTEZ WOMACK,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:21-CR-50-1

ON PETITION FOR REHEARING EN BANC

Before JOLLY, WILLETT, and ENGELHARDT, *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.