

August 25, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-51010  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JIMMY DYRAL WOMACK,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 6:05-CR-35-1  
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Before DAVIS, SMITH, and WIENER, Circuit Judges.

PER CURIAM:\*

Jimmy Dyrall Womack appeals his guilty-plea conviction and sentence for being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2). The district court imposed an enhanced sentence of 300 months of imprisonment under § 924(e)(1). Womack argues that § 924(e)'s treatment of prior violent felony and serious drug offense convictions as sentencing factors rather than elements of the offense is

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000).

Womack's constitutional challenge is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Womack contends that Almendarez-Torres was incorrectly decided and that a majority of the Supreme Court would overrule Almendarez-Torres in light of Apprendi, we have repeatedly rejected such arguments on the basis that Almendarez-Torres remains binding. See United States v. Garza-Lopez, 410 F.3d 268, 276 (5th Cir.), cert. denied, 126 S. Ct. 298 (2005). Womack properly concedes that his argument is foreclosed in light of Almendarez-Torres and circuit precedent, but he raises it here to preserve it for further review.

The judgment of the district court is AFFIRMED.