

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

January 4, 2012

Lyle W. Cayce
Clerk

No. 11-20419

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSEPH JOSE BENITEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:09-CR-97-1

Before KING, JOLLY, and SMITH, Circuit Judges.

PER CURIAM:*

Joseph Jose Benitez presents arguments that he concedes are foreclosed by *United States v. Tickle*s, 661 F.3d 212, 214-15 (5th Cir. 2011), which held that the Fair Sentencing Act of 2010 (FSA) does not apply retroactively to a defendant who is sentenced after the effective date of the FSA but whose offense preceded the FSA's effective date. Benitez raises his arguments solely to preserve them for further review. The Government has moved for summary affirmance, or for an extension of time to file a brief.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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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.