

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20302
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANDRE DENNILE THOMAS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-00-CR-712-1

December 12, 2001

Before HIGGINBOTHAM, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Andre Dennile Thomas appeals his conviction for being a felon in possession of a firearm, in violation of 18 U.S.C.

§ 922(g)(1). Thomas contends that the interstate commerce element of 18 U.S.C. § 922(g)(1) is unconstitutional on its face and as applied to him.

Thomas's challenge to the indictment as being defective for alleging merely that the firearm he possessed was possessed in and affected interstate commerce fails because the language of his indictment tracks the language of 18 U.S.C. § 922(g)(1) and

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

alleges each of the elements of the offense. See United States v. Arlen, 947 F.2d 139, 145 (5th Cir. 1991).

Thomas challenges this court's jurisprudence regarding the constitutionality of § 922(g). However, as this court recently reaffirmed, "the constitutionality of § 922(g) is not open to question." See United States v. Daugherty, 264 F.3d 513, 518 (5th Cir. 2001)(internal quotation marks and citation omitted). The judgment of the district court is AFFIRMED.