

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-20138
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTHONY DWAYNE MARTIN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CR-336-ALL

January 15, 2003

Before JOLLY, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Anthony Dwayne Martin appeals his bench-trial conviction for being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Martin first argues that 18 U.S.C. § 922(g)(1) is unconstitutional on its face and as applied to him. Martin acknowledges that his arguments are foreclosed by circuit precedent, but he raises them to preserve review by the Supreme Court. Martin's arguments are indeed foreclosed. See,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

e.g., United States v. Cavazos, 288 F.3d 706, 712 (5th Cir.), cert. denied, 123 S. Ct. 253 (2002). Accordingly, the judgment of the district court is AFFIRMED in part.

Martin argues that his conviction for unauthorized use of a motor vehicle is not a crime of violence and should not have been considered for sentencing enhancement purposes under U.S.S.G. §§ 2K2.1 and 4B1.2. The Government concedes that Martin's conviction for unauthorized use of a motor vehicle is not a crime of violence and requires that Martin's case be remanded for sentencing. We therefore VACATE the sentence and REMAND for resentencing consistent with United States v. Charles, 301 F.3d 309 (5th Cir. 2002) (en banc).

AFFIRMED IN PART; VACATED IN PART and REMANDED FOR RESENTENCING.