

FILED

February 18, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-21342
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KENNETH WAYNE SHEPHERD,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-02-CR-184-ALL

Before HIGGINBOTHAM, EMILIO M. GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

Kenneth Shepherd appeals from a bench-trial conviction for being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 942(a). Shepherd argues that 18 U.S.C. § 922(g)(1) is an overly broad assertion of Commerce Clause power that unconstitutionally burdens the Second Amendment right to bear arms. Shepherd further argues that 18 U.S.C. § 922(g)(1) violates the Equal Protection Clause.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Shepherd's arguments are foreclosed by this court's holding in United States v. Darrington, 351 F.3d 632 (5th Cir. 2003).

Shepherd also challenges his 18 U.S.C. § 922(g)(1) conviction as a violation of the Commerce Clause and the Tenth Amendment. He argues that the Government did not produce evidence that the firearm was in or substantially affected interstate commerce. Shepherd concedes that these arguments are foreclosed by this court's holding in United States v. Daugherty, 264 F.3d 513, 518 & n.12 (5th Cir. 2001), but he seeks to preserve the issue for Supreme Court review. The judgment of the district court is AFFIRMED.