

April 30, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-30899  
Summary Calendar

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v

GARY K RIDDLE

Defendant - Appellant

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 02-CR-20028-ALL  
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Before KING, Chief Judge, and BARKSDALE and STEWART, Circuit  
Judges.

PER CURIAM:\*

Gary K. Riddle (Riddle) pleaded guilty to production of  
child pornography in violation of 18 U.S.C. § 2251(a) and  
possession of child pornography in violation of 18 U.S.C.  
§ 2252A(a)(5)(B). He appeals, arguing that these statutes are  
unconstitutional as applied to his conduct because they exceed  
Congress's power to regulate interstate commerce under the  
Commerce Clause. In addition, Riddle states that his

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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that this opinion should not be published and is not precedent  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.

constitutional challenge is foreclosed by our ruling in United States v. Kallestad, 236 F.3d 225, 231 (5th Cir. 2000), and only raises the issue to preserve it for future review.

A valid unconditional guilty plea waives all non-jurisdictional defects in the trial court proceedings against a defendant, including an as-applied constitutional challenge to a statute. United States v. Johnson, 194 F.3d 657, 659 (5th Cir. 1999), vacated on other grounds and remanded, 530 U.S. 1201 (2000), opinion reinstated with modification, 246 F.3d 749 (5th Cir. 2001). Riddle's challenge to the interstate commerce aspect of the statutes at issue does not raise a jurisdictional issue. See id. (finding that interstate commerce requirement of arson statute, 18 U.S.C. § 844(i), was "not a prerequisite to subject matter jurisdiction."); United States v. Robinson, 119 F.3d 1205, 1212 n.4 (5th Cir. 1997) (finding that interstate commerce element of Hobbs Act, 18 U.S.C. § 1951, was not jurisdictional). Accordingly, by entering into an unconditional guilty plea agreement, Riddle has waived his as-applied constitutional challenge to 18 U.S.C. §§ 2251(a) and 2252A(a)(5)(B). See Johnson, 194 F.3d at 659.

Accordingly, the judgment of the district court is hereby  
AFFIRMED.