

April 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-20957
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DEQUINCY GERALD TOWNSEND,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-03-CR-136-ALL

Before JOLLY, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Dequincy Gerald Townsend appeals his guilty plea conviction for being a felon in possession of a firearm. Townsend argues that 18 U.S.C. § 922(g) is an unconstitutional infringement on his fundamental Second Amendment right to keep and bear arms. He also argues that 18 U.S.C. § 922(g) is unconstitutional on its face because the statute does not require a "substantial" effect on interstate commerce. Alternatively, he argues that there is an insufficient factual basis for a violation of this statute.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Townsend concedes that various panels of this court have rejected his arguments, and he raises these issues only to preserve them for Supreme Court review.

A panel of this court cannot overrule a prior panel's decision in the absence of an intervening contrary or superseding decision by this court sitting en banc or by the United States Supreme Court. Burge v. Parish of St. Tammany, 187 F.3d 452, 466 (5th Cir. 1999). No such decision exists. Accordingly, Townsend's arguments are indeed foreclosed. The judgment of the district court is AFFIRMED.

The Government has moved for a summary affirmance in lieu of filing an appellee's brief. In its motion, the Government asks that an appellee's brief not be required. The motion is GRANTED.

AFFIRMED; MOTION GRANTED.