

FILED

June 23, 2004

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 04-40083
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JEFFREY LOUIS BERMEA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-01-CR-15-1

Before BARKSDALE, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Jeffrey Louis Bermea appeals his guilty plea conviction for being a felon in possession of a firearm. Bermea 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 the statute is unconstitutional on its face because it 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. Bermea concedes

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that this court has rejected his arguments. See United States v. Daugherty, 264 F.3d 513, 518 (5th Cir. 2001). He raises these issues only to preserve them for further 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, Bermea's argument is 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.