

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

August 18, 2009

\_\_\_\_\_  
No. 08-11208  
Conference Calendar  
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Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

BOBBY RAY DIAZ,

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 6:08-CR-1-1  
\_\_\_\_\_

Before HIGGINBOTHAM, DAVIS, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Appealing the judgment in a criminal case, Bobby Ray Diaz presents arguments that he concedes are foreclosed by *United States v. Daugherty*, 264 F.3d 513, 518 (5th Cir. 2001), which rejected a Commerce Clause challenge to the felon-in-possession-of-a-firearm statute, 18 U.S.C. § 922(g). In addition, Diaz raises arguments that he concedes are foreclosed by *United States v. Avants*, 278 F.3d 510, 522 (5th Cir. 2002), which held that, although the appellant was in state custody and was represented by counsel, the Sixth Amendment right to counsel did not attach with respect to a federal charge for which the appellant

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

had not yet been indicted. The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.