

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

November 22, 2019

Lyle W. Cayce
Clerk

No. 18-10577
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

NICHOLAS BRADLEY GILBERT,

Defendant - Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:17-CR-201-1

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before BARKSDALE, DENNIS, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

In *United States v. Gilbert*, 756 F. App'x 491, 491–92 (5th Cir. 2019), our court affirmed appellant's sentence of 78-months' imprisonment, following his guilty plea for possessing a firearm after a felony conviction, in violation of 18 U.S.C. § 922(g)(1).

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

No. 18-10577

Appellant then petitioned the Supreme Court for a writ of certiorari on 5 June 2019. One of his questions presented for review stated: “Whether 18 U.S.C. § 924(a) provides for criminal penalties to felons who possess firearms in interstate commerce absent proof that they knew of their felon status, or of the firearm’s movement in interstate commerce?” Pet. for Writ of Cert. at ii, *Gilbert v. United States* (No. 18-9589).

The Government’s August 2019 response stated in its entirety:

Petitioner contends (Pet. 11–13) that his conviction for possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2), is infirm because the courts below did not recognize that knowledge of status is an element of that offense. In Rehaif v. United States, 139 S. Ct. 2191 (2019), this Court held that the mens rea of knowledge under Sections 922(g) and 924(a)(2) applies “both to the defendant’s conduct and to the defendant’s status.” Id. at 2194. Accordingly, the appropriate course is to grant the petition for a writ of certiorari, vacate the decision below, and remand the case for further consideration in light of Rehaif.

Mem. for the United States at 1–2, *Gilbert v. United States* (No. 18-9589).

The Supreme Court agreed with the Government’s position. The Court, *inter alia*, granted appellant’s petition for writ of certiorari, vacated this court’s judgment, and remanded this case to this court for further consideration in the light of *Rehaif*. *Gilbert v. United States*, No. 18-9589, 2019 WL 4921159, at *1 (U.S. 7 Oct. 2019).

Accordingly, this case is REMANDED to district court for further consideration in the light of *Rehaif*.