

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

July 2, 2021

Lyle W. Cayce
Clerk

No. 20-11183
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CALVIN WAYNE THOMAS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CR-125-1

Before DAVIS, STEWART, and DENNIS, *Circuit Judges.*

PER CURIAM:*

Calvin Wayne Thomas pleaded guilty to being a felon in possession of a firearm. For the first time on appeal, he argues that 18 U.S.C. § 922(g)(1) is unconstitutional. The Government has filed an unopposed motion for summary affirmance arguing that Thomas's challenge is foreclosed by circuit

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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precedent or, alternatively, for an extension of time to file its brief on the merits.

Summary affirmance is proper if “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Thomas’s argument that § 922(g)(1) is unconstitutional because it exceeds the scope of Congress’s power under the Commerce Clause is foreclosed. *See United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013); *United States v. Daugherty*, 264 F.3d 513, 518 (5th Cir. 2001); *United States v. De Leon*, 170 F.3d 494, 499 (5th Cir. 1999). He concedes as much and raises the argument to preserve it for further review. Accordingly, the Government’s motion for summary affirmance is GRANTED, the alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.