

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

July 20, 2022

Lyle W. Cayce
Clerk

No. 22-10175
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

SURPRISE EMMANUEL CARTER,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:21-CR-248-1

Before SMITH, STEWART, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

Surprise Emmanuel Carter appeals his conviction and sentence for possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1). He argues that § 922(g) is an unconstitutional exercise of power under the Commerce Clause. He also argues that the factual basis was insufficient to

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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support his conviction because it did not include, as the mens rea element for the offense, that he knew that his possession of the firearm was in or affecting interstate commerce. Carter acknowledges these arguments to be foreclosed but explains that he seeks to preserve them for further review. The Government has filed an unopposed motion for summary affirmance or, in the alternative, an extension of time to file its brief.

As Carter concedes, his arguments are foreclosed. *See United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013); *United States v. Hicks*, 958 F.3d 399, 402 n.1 (5th Cir. 2020). The Government is correct that summary affirmance is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, the Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time to file a brief is DENIED, and the district court's judgment is AFFIRMED.