

United States Court of Appeals for the Fifth Circuit

No. 22-51021
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 15, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOHN MICHAEL GARZA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:22-CR-135-1

Before HIGGINBOTHAM, GRAVES, and HO, *Circuit Judges.*

PER CURIAM:*

John Michael Garza pleaded guilty to possession of a firearm after having been convicted of a felony, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), and the district court imposed a sentence of 96 months in prison to be followed by three years of supervised release. On appeal, Garza argues that § 922(g)(1), as applied to him, violates the Second Amendment,

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 22-51021

particularly in light of the recent decisions in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), and *United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023), *petition for cert. filed* (U.S. Mar. 17, 2023) (No. 22-915).

Because Garza did not make this argument in the district court, we review for plain error only. *See United States v. Knowles*, 29 F.3d 947, 950 (5th Cir. 1994); *see also Puckett v. United States*, 556 U.S. 129, 135 (2009). An error is not clear or obvious where an issue is disputed or unresolved, or where there is an absence of controlling authority. *United States v. Rodriguez-Parra*, 581 F.3d 227, 230-31 (5th Cir. 2009). In fact, “[e]ven where the argument requires only extending authoritative precedent, the failure of the district court [to do so] cannot be plain error.” *Wallace v. Mississippi*, 43 F.4th 482, 500 (5th Cir. 2022) (internal quotation marks and citation omitted). Because there is no binding precedent explicitly holding that § 922(g)(1) is unconstitutional on its face or as applied and because it is not clear that either *Bruen* or *Rahimi* dictate such a result, Garza is unable to demonstrate an error that is clear or obvious. *See Rodriguez-Parra*, 581 F.3d at 230-31; *see also United States v. Petras*, 879 F.3d 155, 164 (5th Cir. 2018).

The judgment of the district court is AFFIRMED.