

United States Court of Appeals for the Fifth Circuit

No. 23-10081
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 18, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

GARY VON BENNETT,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:21-CR-427-1

Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:*

Gary Von Bennett pleaded guilty to possession of a firearm after a felony conviction, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The district court sentenced him to 108 months of imprisonment and three years of supervised release. Bennett contends that § 922(g)(1) is unconstitutional because it exceeds Congress's power under the Commerce Clause and that

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

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§ 922(g) should be construed to require either recent movement of a firearm across state lines or movement of a firearm across state lines in response to the defendant's conduct. However, he correctly concedes that these arguments are foreclosed by *Scarborough v. United States*, 431 U.S. 563 (1977), and *United States v. Alcantar*, 733 F.3d 143 (5th Cir. 2013), and he merely raises these issues to preserve them for further review. The Government has moved for summary affirmance, or, alternatively, for an extension of time to file a brief.

Because summary affirmance is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), 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.