

United States Court of Appeals for the Fifth Circuit

No. 24-10764
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 15, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

KENDRICK JARRELL BEAIRD,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:23-CR-28-1

Before RICHMAN, GRAVES, and DOUGLAS, *Circuit Judges*.

PER CURIAM:*

Kendrick Jarrell Beaird pleaded guilty to possession of a firearm as a convicted felon in violation of 18 U.S.C. § 922(g)(1) and was sentenced to 72 months of imprisonment and three years of supervised release. He now appeals his conviction on various grounds. The Government has filed an

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

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opposed motion for summary affirmance or, alternatively, for an extension of time in which to file a brief.

First, Beaird cannot show on plain error review that § 922(g)(1) is unconstitutional as applied to him because he was previously convicted of a felony. *See United States v. Cisneros*, 130 F.4th 472, 477 (5th Cir. 2025) (per curiam). His alternative request that we should remand this case for the district court to reconsider this question in light of *United States v. Rahimi*, 602 U.S. 680 (2024), and *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024), *petition for cert. filed* (U.S. Feb. 18, 2025) (No. 24-6625), is therefore denied. *See Cisneros*, 130 F.4th at 477.

Second, Beaird correctly recognizes that his facial challenge to § 922(g)(1) is foreclosed by *Diaz*, 116 F.4th at 471-72. *See Cisneros*, 130 F.4th at 477. Next, Beaird's arguments that § 922(g)(1) is unconstitutional under the Commerce Clause are foreclosed. *See United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013); *United States v. Perryman*, 965 F.3d 424, 426 (5th Cir. 2020).

Fourth, Beaird rightly concedes that his argument that the district court erred in relying on the Guidelines commentary to conclude that a 17-round magazine qualified as a "large capacity magazine" for the purposes of the enhancement under U.S.S.G. § 2K2.1(a)(3) is foreclosed. *See United States v. Martin*, 119 F.4th 410, 414-15 (5th Cir. 2024), *cert. denied*, ___ U.S. ___, 2025 WL 889259 (2025). Finally, Beaird is correct that his argument that the district court erred in finding that Texas aggravated assault was a crime of violence under U.S.S.G. § 2K2.1(a)(3) is foreclosed. *See United States v. Guillen-Alvarez*, 489 F.3d 197, 199-201 (5th Cir. 2007); *United States v. Shepherd*, 848 F.3d 425, 427-28 (5th Cir. 2017).

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