

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5632
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOE E. GARZA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-91-CR-463
- - - - -

March 17, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Joe E. Garza was convicted of being a felon in possession of a firearm under 18 U.S.C. § 922(g)(1). He challenges his conviction, alleging the district court erred in delivering a jury charge pertaining to the law of constructive possession. His challenge has no merit.

A trial judge has substantial latitude in fashioning jury instructions. United States v. Allibhai, 939 F.2d 244, 251 (5th Cir. 1991), cert. denied, 112 S.Ct. 967 (1992). When a jury charge is challenged on appeal, this Court evaluates it in its

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

entirety, looking to see whether the charge as a whole was correct. United States v. Hagmann, 950 F.2d 175, 180 (5th Cir. 1991), cert. denied, 113 S.Ct. 108 (1992).

The contested charge is, "[Y]ou should not be concerned as to the ownership of the firearm. But rather, whether or not the defendant knowingly possessed a firearm, as those terms are described by the court." Garza argues that the instruction was "incorrect" in that the jury could "disregard all evidence of ownership when ownership is but one indicia [sic] of ownership [sic; apparently "possession"]." Garza cites no authority for this proposition. Ownership is not essential to proof of possession. United States v. Rocha, 916 F.2d 219, 237 (5th Cir. 1990), cert. denied, 111 S.Ct. 2057 (1991).

The standard of review for a claim of jury instruction error is "whether the court's charge, as a whole, is a correct statement of the law *and* whether it clearly instructs jurors as to the principles of law *applicable to the factual issues confronting them.*" United States v. Lara-Velasquez, 919 F.2d 946, 950 (5th Cir. 1990) (quoting United States v. Stacey, 896 F.2d 75, 77 (5th Cir. 1990)) (emphasis added in Lara-Velasquez). The district court's instruction was a correct statement of law. There was no error.

Garza also contends the sentencing judge erred by adding three points to Garza's criminal history category for offenses committed prior to age 18 under U.S.S.G. § 4A1.2(d). He is incorrect.

The relevant three-point addition was made pursuant to § 4A1.2(k). Under § 4A1.2(k), when an original sentence of probation is revoked, the original term of imprisonment is added to the term of imprisonment imposed upon revocation.

§ 4A1.2(k)(1). At age 17, Garza was sentenced to ten years of imprisonment for burglary of a building. That sentence was suspended for ten years of probation. On 28 September 1987, that probation was revoked, and Garza was sentenced to eight years of imprisonment. Under § 4A1.2(k), the original term of imprisonment (zero years) is added to the term of imprisonment imposed upon revocation (eight years). § 4A1.2(k)(1). The eight-year total is then used to compute the criminal history points under § 4A1.1. Id. Under § 4A1.1, three points are added for each prior sentence exceeding one year and one month.

§ 4A1.1(a). Because the eight-year sentence exceeds a sentence of one year and one month, Garza properly received a three-point addition to his criminal history category.

For the foregoing reasons, Garza's conviction and sentence are AFFIRMED.