UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-1693

(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MITCHELL RAY LEONARD,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(6:91 CV 099 W(CR 6 87 0002))

(February 22, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:[*]

Mitchell Ray Leonard appeals the district court's denial of his motion to vacate, set aside or correct sentence, pursuant to 28 U.S.C. § 2255 (1988). Finding no error, we affirm.

In May 1988, authorities searched Leonard's residence and seized eleven firearms. Before the search, Leonard had been convicted of committing three felonies.[1] Leonard pleaded guilty to

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[*] Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

[1] Leonard had been convicted twice of burglary of a habitation to which he was sentenced to five years of imprisonment each time. He was also convicted of burglary of a building to which he was sentenced to not less than

two counts of felony possession of a firearm in violation of 18 U.S.C. § 922(g)(1)(1988), and was sentenced to two concurrent five-year terms of imprisonment. Leonard subsequently filed a § 2255 motion to vacate, set aside or correct sentence. The magistrate judge, without an evidentiary hearing, recommended that Leonard's motion be dismissed. The district court adopted the magistrate judge's recommendation and dismissed the motion with prejudice. Leonard filed a timely notice of appeal.

Leonard contends that the district court erred in denying his § 2255 motion because he was not subject to conviction under § 922(g)(1). In reviewing the denial of a § 2255 motion, we review the district court's findings of fact for clear error. *United States v. Gipson*, 985 F.2d 212, 214 (5th Cir. 1993). Questions of law are reviewed de novo. *Id*.

Section 922(g) makes it unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for more than one year to possess a firearm. State law determines the definition of a crime punishable by imprisonment for more than a year. *See* 18 U.S.C. § 921(a)(20)(1988). However, "[a]ny conviction which has been expunged, or set aside or for which a person has been pardoned *or has had civil rights restored* shall not be considered a conviction for purposes of this chapter," unless the state provides otherwise. *Id*. (emphasis added). Leonard argues that because Texas law allows him to possess a firearm, *see* Tex. Penal Code Ann. § 46.05 (Vernon 1989), his civil rights had

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two and not more than seven years of imprisonment.

been restored for purposes of § 921(a)(20), and thus he is not subject to conviction under § 922(g)(1).

We recently had cause to address this issue. In *United States v. Thomas*, 991 F.2d 206 (5th Cir.), *cert. denied*, 114 S.Ct. 607 (1993), the defendant challenged his conviction for felony possession of a firearm in violation of 18 U.S.C. § 922(g) on the ground that Texas state law permitted a person convicted of a non-violent felony to possess firearms. We held that because "[T]exas neither actively nor passively restores the civil rights of persons convicted of such felonies merely by permitting them to possess firearms or by not declaring their possession of firearms to be unlawful," *id*. at 215, the exception described in § 921(a)(20) did not apply, and thus the defendant was subject to conviction under § 922(g)(1). Based on *Thomas*, we reject Leonard's argument that his civil rights were restored under Texas law for purposes of § 921(a)(20). Consequently, we hold that he was subject to conviction under § 922(g)(1). To the extent that Leonard argues that *Thomas* was decided wrongly, we note that "[i]n this Circuit one panel may not overrule the decision, right or wrong, of a prior panel in the absence of en banc consideration or superseding decision of the Supreme Court."[2] *Pruitt v. Levi Strauss & Co.*, 932 F.2d 458, 465 (5th Cir. 1991).

Leonard next contends that the district court erred in failing

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[2] We reject Leonard's remaining challenges to his conviction and sentence))i.e., that his plea was involuntary, that the evidence was insufficient to support his conviction, and that he received ineffective assistance of counsel))as they are all dependent upon his arguments we find foreclosed by *Thomas*.

to grant him an evidentiary hearing. He argues that he was entitled to an evidentiary hearing based upon his argument that his civil rights to vote and run for public office were restored as a result of a certificate of discharge issued by the Board of Pardons and Paroles. An evidentiary hearing is necessary only if the district court cannot resolve the allegations without examining evidence beyond the record. *See U.S. v. Smith*, 915 F.2d 959, 964 (5th Cir. 1990). Because Leonard failed to allege that he actually obtained a certificate of discharge, an evidentiary hearing was not necessary.

Accordingly, we AFFIRM the district court's judgment.