

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

February 15, 2011

Lyle W. Cayce
Clerk

No. 09-10984
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RUSSELL CATES,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:09-CR-18-1

Before HIGGINBOTHAM, GARZA, and ELROD, Circuit Judges.

PER CURIAM:*

Appealing the judgment in a criminal case, Russell Cates presents arguments that he concedes are foreclosed by *United States v. Daugherty*, 264 F.3d 513, 518 (5th Cir. 2001), which rejected a Commerce Clause challenge to 18 U.S.C. § 922(g)(1), and *United States v. Dancy*, 861 F.2d 77, 81-82 (5th Cir. 1988), which held that a conviction under § 922(g) does not require proof that the defendant knew that the firearm had an interstate nexus or that he was a felon. Cates also raises arguments that he concedes are foreclosed by *United States v.*

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 09-10984

Brown, 920 F.2d 1212, 1216-17 (5th Cir. 1991), *abrogated on other grounds by United States v. Candia*, 454 F.3d 468, 472-73 (5th Cir. 2006), which held that a district court may order a term of imprisonment to run consecutively to an unimposed state sentence.

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