

United States Court of Appeals for the Fifth Circuit

No. 22-50365
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 25, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CALEB BRYANT HICKCOX,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:21-CR-361-1

Before JOLLY, JONES, and HO, *Circuit Judges.*

PER CURIAM:*

Caleb Bryant Hickcox 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 63 months of imprisonment and three years of supervised release.

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

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Hickcox argues that his § 922(g)(1) conviction is unconstitutional under the Supreme Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022). Because Hickcox did not challenge the constitutionality of § 922(g)(1) before the district court, we review only for plain error. *See United States v. Knowles*, 29 F.3d 947, 950 (5th Cir. 1994). To show plain error, the appellant must show a forfeited error that is clear or obvious and that affects his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). An error is not clear or obvious where an issue is disputed or unresolved, or where there is an absence of controlling authority. *United States v. Rodriguez-Parra*, 581 F.3d 227, 230-31 (5th Cir. 2009). "Even where the argument requires only extending authoritative precedent, the failure of the district court [to do so] cannot be plain error." *Wallace v. Mississippi*, 43 F.4th 482, 500 (5th Cir. 2022) (internal quotation marks and citation omitted). Because there is no binding precedent explicitly holding that § 922(g)(1) is unconstitutional and because it is not clear that *Bruen* dictates such a result, Hickcox is unable to demonstrate an error that is clear or obvious. *See Rodriguez-Parra*, 581 F.3d at 230-31.

Hickcox also seeks to preserve the argument that § 922(g)(1) is unconstitutional because it exceeds Congress's power under the Commerce Clause. As he concedes, this argument is foreclosed. *See United States v. De Leon*, 170 F.3d 494, 499 (5th Cir. 1999); *United States v. Perryman*, 965 F.3d 424, 426 (5th Cir. 2020).

Finally, Hickcox argues that his 63-month sentence is substantively unreasonable. Our review is for abuse of discretion. *See Holguin-Hernandez v. United States*, 140 S. Ct. 762, 766 (2020); *Gall v. United States*, 552 U.S. 38, 46-47, 49-51 (2007). Hickcox has not shown that the district court did not account for a factor that should have received significant weight, gave significant weight to an improper factor, or made a clear error in balancing the sentencing factors. *See United States v. Warren*, 720 F.3d 321, 332 (5th

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Cir. 2013). The district court reviewed and adopted the presentence report, considered Hickcox's mitigating arguments, and determined that an above-guidelines sentence was appropriate because of the nature and circumstances of his offense. His argument that the district court should have weighed the sentencing factors differently "is not a sufficient ground for reversal." *United States v. Malone*, 828 F.3d 331, 342 (5th Cir. 2016); *see also United States v. Hernandez*, 876 F.3d 161, 167 (5th Cir. 2017).

AFFIRMED.