

# United States Court of Appeals for the Fifth Circuit

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No. 23-30503  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

May 6, 2024

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

ALLEN GRAY,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 2:20-CR-84-2

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Before BARKSDALE, GRAVES, and OLDHAM, *Circuit Judges*.

PER CURIAM:\*

Allen Gray received a within-Guidelines 180-months' sentence after pleading guilty to two counts of possession with the intent to distribute a controlled substance, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B)–(D); two counts of possession of firearms in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i); and two counts of being a

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

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felon in possession of firearms, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2).

Gray presents two issues regarding his convictions and one regarding his sentence. For the former, he asserts: those under § 922(g)(1) violate the Second Amendment in the light of *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022) (announcing rule for assessing whether statute infringes Second Amendment); and those relating to the possession of a firearm (felon in possession and possession in furtherance of drug-trafficking crime) violate the Double Jeopardy Clause. For the latter, he asserts: his sentence is substantively unreasonable because it is greater than necessary to achieve the sentencing goals of 18 U.S.C. § 3553(a).

Because Gray did not preserve any of these issues in district court, review is only for plain error. *E.g.*, *United States v. Broussard*, 669 F.3d 537, 546 (5th Cir. 2012). Under that standard, Gray must show a forfeited plain error (clear-or-obvious error, rather than one subject to reasonable dispute) that affected his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes that showing, we have the discretion to correct the reversible plain error, but generally should do so only if it “seriously affect[s] the fairness, integrity or public reputation of judicial proceedings”. *Id.* (citation omitted). He fails to show the requisite clear-or-obvious error for each of the three issues.

Gray’s contention that his § 922(g)(1) convictions are unconstitutional in the light of *Bruen* is foreclosed by *United States v. Jones*, 88 F.4th 571, 573–74 (5th Cir. 2023), *cert. denied*, No. 23-6769, 2024 WL 1143799 (U.S. 18 Mar. 2024). (He raises the issue to preserve it for possible further review.)

His contention that the court violated his double-jeopardy rights by imposing multiple sentences based on the same firearm is, likewise,

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foreclosed. *See United States v. Berry*, 977 F.2d 915, 919 (5th Cir. 1992) (concluding “use or carrying of a firearm during a drug-trafficking offense” is “obviously is a crime Congress treated as separate and apart from the threat posed by a felon in possession of a firearm”).

Regarding the sentence, the court considered Gray’s mitigation assertions, the record, and the 18 U.S.C. § 3553(a) sentencing factors before concluding a sentence at the bottom of the advisory Sentencing Guidelines range was appropriate. As noted, Gray fails to show the requisite clear-or-obvious error in his presumptively reasonable, within-Guidelines sentence. *See, e.g., United States v. Kearby*, 943 F.3d 969, 978–79 (5th Cir. 2019) (“Under [plain-error] (or any) standard, [defendant] doesn’t overcome the rebuttable presumption of reasonableness of a within-guideline sentence like his.” (citation omitted)).

AFFIRMED.