

United States Court of Appeals
for the Fifth Circuit

No. 24-10132
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 16, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MARK ALLEN HAYDEN,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:23-CR-80-1

Before HAYNES, HIGGINSON, and DOUGLAS, *Circuit Judges*.

PER CURIAM:*

Mark Allen Hayden pleaded guilty to possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(8), and was sentenced to an above-guidelines term of 72 months of imprisonment and three years of supervised release. On appeal, Hayden challenges the district

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

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court's application of an enhanced base offense level of 20 pursuant to U.S.S.G. § 2K2.1(a)(4)(A), and the facial constitutionality of § 922(g)(1).

Because Hayden did not preserve either of his challenges, our review is limited to plain error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). To show plain error, Hayden must show the forfeited error is clear or obvious and affects his substantial rights. *See id.* If Hayden makes such a showing, this court has the discretion to correct the error but should do so only if it “seriously affects the fairness, integrity or public reputation of judicial proceedings.” *Id.* (internal quotation marks, citation, and brackets omitted).

Hayden's base offense level was enhanced because his 2001 conviction for Texas robbery was classified as a crime of violence for the purposes of § 2K2.1(a)(4)(A). The state indictment indicates that Hayden was convicted of robbery-by-threat, which satisfies the relevant definition. *See United States v. Garrett*, 24 F.4th 485, 491 (5th Cir. 2022). Hayden has not shown any error, let alone a clear or obvious one.

Hayden also concedes that his argument § 922(g)(1) is unconstitutional is foreclosed on plain error review. *United States v. Jones*, 88 F.4th 571, 573-74 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 1081 (2024).

Accordingly, the district court's judgment is AFFIRMED.