

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 15, 2022

Lyle W. Cayce
Clerk

No. 21-40638
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ROBERT ANDREW RILEY,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:18-CR-296-1

Before HIGGINBOTHAM, HIGGINSON, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

Robert Andrew Riley appeals his convictions for receipt of child pornography, in violation of 18 U.S.C. § 2252A(a)(2)(B), (b)(1), and possession of child pornography, in violation of § 2252A(a)(5)(B), (b)(2). He argues the district court erred by failing to declare unconstitutional the

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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statute under which he was convicted because (1) child pornography is not one of the federal crimes listed in the Constitution and (2) federal prosecution for conduct related to child pornography is beyond the scope of the Commerce Clause. Because Riley did not present the foregoing issues to the district court, our review is limited to plain error. *See United States v. Howard*, 766 F.3d 414, 419 (5th Cir. 2014); *see also Puckett v. United States*, 556 U.S. 129, 135 (2009).

Riley has not shown any clear or obvious error with respect to the constitutionality of § 2252A(a). Here, *United States v. Comstock*, 560 U.S. 126, 135-36 (2010), disposes of his first argument. Riley's second argument is foreclosed by *United States v. Kallestad*, 236 F.3d 225, 226-31 (5th Cir. 2000). Although Riley asserts that this court should reconsider *Kallestad*, one panel of this court may not overrule the decision of another absent a superseding en banc or Supreme Court decision. *See United States v. Lipscomb*, 299 F.3d 303, 313 & n.34 (5th Cir. 2002).

The judgment of the district court is AFFIRMED.