

United States Court of Appeals for the Fifth Circuit

No. 21-50612
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 23, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ROBERT EDWARD GUERRA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:17-CR-915-1

Before KING, COSTA, and HO, *Circuit Judges.*

PER CURIAM:*

Robert Edward Guerra was convicted by a jury of possession of a firearm by a felon. The district court sentenced Guerra to a 51-month term of imprisonment to be followed by a three-year term of supervised release. On appeal, Guerra argues that 18 U.S.C. § 922(g)(1), the statute of

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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conviction, exceeds the scope of Congress’s power under the Commerce Clause and is thus unconstitutional. He concedes that his claim is foreclosed by circuit precedent, and he raises the issue to preserve it for further review. The Government has filed an unopposed motion for summary affirmance and an alternative request for an extension of time to file its brief.

Summary affirmance is proper if “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Guerra’s challenge to the constitutionality of § 922(g)(1) is foreclosed. *See United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013); *United States v. Daugherty*, 264 F.3d 513, 518 (5th Cir. 2001); *United States v. Rawls*, 85 F.3d 240, 242 (5th Cir. 1996).

Accordingly, the Government’s unopposed motion for summary affirmance is GRANTED. The Government’s alternative motion for an extension of time to file an appellate brief is DENIED. The district court’s judgment is AFFIRMED.