

No. __-_____

IN THE SUPREME COURT OF THE UNITED STATES

TRAMAIN DEON PRICE,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

APPENDIX

INDEX TO APPENDICES

Appendix A Judgment and Opinion of Fifth Circuit

Appendix B Judgment and Sentence of the United States District Court for the
Northern District of Texas

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-11406
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 21, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

TRAMAIN DEON PRICE,

Defendant–Appellant.

Appeal from the United States District Court
for the Northern District of Texas
No. 6:17-CR-38-1

Before HIGGINBOTHAM, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Tramain Price appeals his conviction of possession of a firearm by a

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

person addicted to a controlled substance, in violation of 18 U.S.C. § 922(g)(3). He has filed an unopposed motion for summary disposition, conceding that his arguments are foreclosed. He raises the issues only to preserve them for possible further review.

Price asserts, relying on *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012) (*NFIB*), that § 922(g)(3) is unconstitutional because it regulates conduct that falls outside the Commerce Clause, but he concedes that the issue is foreclosed by *United States v. Alcantar*, 733 F.3d 143 (5th Cir. 2013). In *Alcantar*, *id.* at 145, we noted that our decisions have “consistently upheld the constitutionality” of 18 U.S.C. § 922(g)(1), which we described as “a valid exercise of Congress’s authority under the Commerce Clause.” We explained that *NFIB* “did not address the constitutionality of § 922(g)(1), and it did not express an intention to overrule the precedents upon which our cases—and numerous other cases in other circuits—relied in finding statutes such as § 922(g)(1) constitutional.” *Alcantar*, 733 F.3d at 146. Although *Alcantar* concerned the constitutionality of § 922(g)(1) following *NFIB*, *see id.* at 145–46, its holding—like the holdings of other cases referenced herein addressing § 922(g)(1) convictions—applies with equal force to § 922(g)(3), the closely-related provision under which Price was convicted. *See United States v. Butler*, 637 F.3d 519, 523 (5th Cir. 2011) (explaining that “[t]he subsections of § 922(g) list the nine classes of prohibited status under which people cannot possess firearms). Thus, as Price concedes, this argument is foreclosed. *See Alcantar*, 733 F.3d at 145–46.

Citing *United States v. Wallace*, 889 F.2d 580, 583 (5th Cir. 1989), Price contends that this court’s construction of § 922(g) is contrary to the plain language because we do not interpret the statutory phrase “possess in or affecting commerce” as requiring proof that the defendant’s possession of the firearm

was in or affecting commerce, but only that the firearm itself “crossed state lines.” We have held, however, that evidence that “the firearm traveled in or affected interstate commerce” suffices to establish the interstate-commerce “nexus” of the statute. *See United States v. Gresham*, 118 F.3d 258, 265–66 (5th Cir. 1997) (§ 922(g)(1) case). One panel of this court may not overrule a decision of another panel in the absence of an intervening contrary or superseding decision by this court sitting en banc or by the Supreme Court. *See United States v. Traxler*, 764 F.3d 486, 489 (5th Cir. 2014). Therefore, Price’s argument is foreclosed.

Relying on *Flores-Figueroa v. United States*, 556 U.S. 646 (2009), Price challenges his conviction on the ground that the indictment did not allege, and the factual basis did not establish, that he knew that his possession of the firearm was in or affecting interstate commerce. Under *United States v. Dancy*, 861 F.2d 77, 81–82 (5th Cir. 1988), a § 922(g)(1) conviction “requires proof that the defendant knew that he had received (or possessed or transported) a firearm but does not require proof that he knew that the firearm had an interstate nexus.” *United States v. Schmidt*, 487 F.3d 253, 254 (5th Cir. 2007). Price asserts that his argument is foreclosed by *United States v. Rose*, 587 F.3d 695 (5th Cir. 2009), which was decided after *Flores-Figueroa*. Indeed, in *Rose*, 587 F.3d at 705–06, we determined that *Dancy* remains good law even after *Flores-Figueroa*. In view of the foregoing, Price correctly concedes that this argument is foreclosed.

Accordingly, because summary disposition is appropriate, the motion for summary disposition is GRANTED, and the judgment is AFFIRMED. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

APPENDIX B

Northern District of Texas

San Angelo Division

FILED

2017 NOV 17 PM 4:48

DEPUTY CLERK BMG Case Number: 6:17-CR-00038-C(01)
USM No. 55819-177

UNITED STATES OF AMERICA

v.

TRAMAIN DEON PRICE
Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, TRAMAIN DEON PRICE, was represented by Sherylynn A. Kime-Goodwin.

The defendant pleaded guilty to count 1 of the indictment filed June 14, 2017. Accordingly, the court has adjudicated that the defendant is guilty of the following offenses:

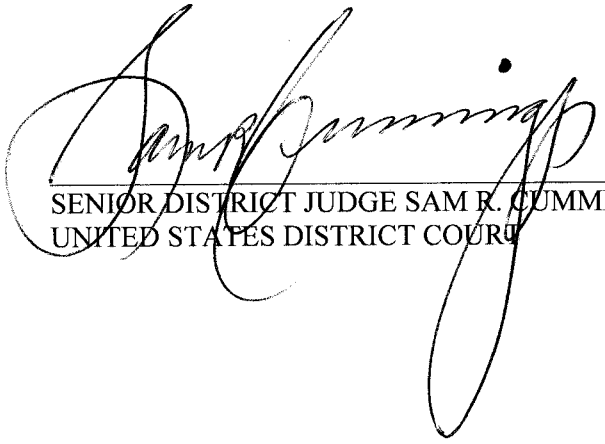
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number</u>
18 U.S.C. §§ 922(g)(3) and 924(a)(2)	Possession Of Firearms By A Prohibited Person	03/26/2017	1

As pronounced on November 17, 2017, the defendant is sentenced as provided in pages 1 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$100.00, for count 1 of the indictment, which shall be due immediately. Said special assessment shall be made to the Clerk, U.S. District Court.

It is further ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material change in the defendant's economic circumstances.

Signed this the 17th day of November, 2017.



SENIOR DISTRICT JUDGE SAM R. CUMMINGS
UNITED STATES DISTRICT COURT

DEFENDANT: TRAMAIN DEON PRICE
CASE NUMBER: 6:17-CR-00038-C(01)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 46 months as to count 1 to run consecutive to any sentence that may be imposed in the pending probation revocation, Case No. C-14-1257-SB, 340th District Court, Tom Green County, Texas; and to run concurrent with any sentence that may be imposed in the following cases pending in Tom Green County, Texas: Case No. C-17-0513-SB; Case No. 17-01025; Case No. 17-01027; Case No. 17-01113.

The defendant shall remain in the custody of the U.S. Marshal Service.

The Court recommends placement at FCI Big Spring, Big Spring, Texas.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: TRAMAIN DEON PRICE
CASE NUMBER: 6:17-CR-00038-C(01)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 3 years.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer.
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.
- ☐ The defendant shall participate in an approved program for domestic violence.
- ☐ The defendant must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Fine and Restitution sheet of the judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: TRAMAIN DEON PRICE
CASE NUMBER: 6:17-CR-00038-C(01)

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall abstain from the use of alcohol and all other intoxicants during the term of supervision.
2. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.
3. The defendant shall participate in a program (inpatient and/or outpatient) approved by the U.S. Probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$25.00 per month.