

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOSE BRYAN GONZALEZ,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

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District of Texas

APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

July 3, 2019

Lyle W. Cayce
Clerk

No. 18-11306
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE BRYAN GONZALEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CR-90-1

Before KING, SOUTHWICK, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Jose Bryan Gonzalez appeals his guilty plea conviction for unlawfully receiving a firearm that has been shipped in interstate commerce while under indictment for a crime punishable by imprisonment for more than one year, in violation of 18 U.S.C. § 922(n) and punishable under 18 U.S.C. § 924(a)(1)(D). Gonzalez admitted to the factual resume, which stated that he received a Ruger pistol that had been shipped or transported in interstate commerce.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

He contends that his guilty plea was not supported by a sufficient factual basis because his mere receipt of a firearm that had at some point been in interstate commerce without proof that he caused or knew of the interstate movement failed to establish a violation of § 922(n) that is punishable under § 924(a)(1)(D). Gonzalez relies on *Bond v. United States*, 572 U.S. 844 (2014), and the word “willfully” in § 924(a)(1)(D). The Government moves for summary affirmance or, alternatively, for an extension of time to file a brief, asserting that Gonzalez’s argument is foreclosed by *United States v. Fitzhugh*, 984 F.2d 143 (5th Cir. 1993), in which we held that “a convicted felon’s possession of a firearm having a past connection to interstate commerce violates [18 U.S.C.] § 922(g)(1).” *Id.* at 146. Gonzalez concedes that his argument is effectively foreclosed but raises it to preserve the issue for further review.

Summary affirmance is not appropriate in this case because the parties cite no binding authority addressing whether *Fitzhugh* applies to § 922(n). *See United States v. Houston*, 625 F.3d 871, 873 n.2 (5th Cir. 2010). However, we may affirm the conviction without further briefing because, as Gonzalez concedes, no binding authority presently supports his reading of § 922(n) and § 924(a)(1)(D). Moreover, we rejected such a reading of somewhat similar statutory language in *Fitzhugh* and in *United States v. Dancy*, 861 F.2d 77, 80-82 (5th Cir. 1988). *See United States v. Salinas*, 480 F.3d 750, 759 (5th Cir. 2007); *see also United States v. Ponce-Flores*, 900 F.3d 215, 218-19 (5th Cir. 2018). Gonzalez thus fails to show that the district court committed clear or obvious error. *See United States v. Trejo*, 610 F.3d 308, 313 (5th Cir. 2010).

The Government’s motions for summary affirmance and, alternatively, for an extension of time to file a brief are DENIED. The judgment is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 4:18-CR-00090-Y(1)

Frank L. Gatto, assistant U.S. attorney

JOSE BRYAN GONZALEZ

Cody Cofer, attorney for the defendant

On May 9, 2018, the defendant, Jose Bryan Gonzalez, entered a plea of guilty to count one of the one-count indictment. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:


<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE CONCLUDED</u>	<u>COUNT</u>
18 U.S.C. §§ 922(n) & 924 (a)(1)(D)	Unlawful Possession of a Firearm	January 26, 2018	1

The defendant is sentenced as provided in pages two through three of this judgment. The sentence is imposed under Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission under Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 for count one of the one-count indictment.

The defendant shall notify the United States attorney for this district within thirty 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.

Sentence imposed September 18, 2018.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed September 20, 2018.

Defendant: Jose Bryan Gonzalez

Case Number: 4:18-CR-00090-Y(1)

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IMPRISONMENT

The defendant, Jose Bryan Gonzalez, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 30 months on count one of the one-count indictment. The sentence shall run consecutively with any sentence that may be imposed in case no. 1524379D in Criminal Court No. 3, Tarrant County, Texas.

The defendant is remanded to the custody of the United States marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of two years on count one of the one-count indictment.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer in a manner and frequency directed by the Court or probation officer;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) 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; and
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the probation officer;

Defendant: Jose Bryan Gonzalez

Case Number: 4:18-CR-00090-Y(1)

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report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Federal Bureau of Prisons;

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; and

participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

FORFEITURE

Under 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), it is hereby ordered that defendant's interest in the following property is condemned and forfeited to the United States: one Ruger, model LCP, .380-caliber pistol, bearing Serial No. 371916328, including any ammunition, magazines, and/or accessories recovered with the firearm.

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 marshal