

No. 21- 5659

**IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2021**

WILLIE POWELL,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

APPENDIX CONTENTS

Document 1: Opinion Below

Document 2: Plea and Acknowledgment of Rights Form from State Court

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-12353
Non-Argument Calendar

D.C. Docket No. 4:19-cr-00013-MW-MAF-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIE POWELL,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida

(April 9, 2021)

Before MARTIN, BRANCH, and LUCK, Circuit Judges.

PER CURIAM:

Willie Powell appeals his conviction for possessing a firearm and ammunition as a felon under 18 U.S.C. section 922(g)(1), arguing that section 922(g) is unconstitutional, facially and as applied to him, because it violates the Commerce Clause. We affirm because, as Powell concedes, his argument is foreclosed by our binding precedent.

Powell was stopped by police for driving over the speed limit. Because Powell did not have a valid license, he was arrested. While Officer Mitch Outlaw arrested Powell, Officer Robert Amos looked into the car and saw loose marijuana on the passenger seat. The officers then searched the car and found “zip-style baggies, three of which contained a white powdery crystal-type substance,” marijuana in a glass jar, and a backpack that contained a loaded firearm, a laptop, and drug paraphernalia. The firearm was manufactured in Georgia and its ammunition was manufactured in Brazil. Powell was indicted for possessing a firearm and ammunition as a convicted felon.

After the government presented these facts at trial, Powell moved for a judgment of acquittal. Powell argued that the felon-in-possession statute, 18 U.S.C. § 922(g)(1), violated the Commerce Clause, facially and as applied to him, because it punished the possession of a firearm even though there was no evidence that he was the one who transported the firearm and ammunition in interstate and foreign commerce. Powell conceded, however, that the district court was bound by Eleventh

Circuit precedent to deny his judgment of acquittal motion. So that's what the district court did.

The jury found Powell guilty as charged. He was sentenced to 180 months' imprisonment and three years of supervised release.

On appeal, Powell makes the same argument he made in the district court: the felon-in-possession statute, section 922(g), is unconstitutional because it "goes beyond Congress's power under the Commerce Clause."¹ As he did before the district court, Powell acknowledges that "[t]his Court has repeatedly" held otherwise and that "the Court is constrained by the prior precedent rule."

We have, many times, rejected the same Commerce Clause argument that Powell made in the district court and that he makes here. See United States v. Johnson, 981 F.3d 1171, 1192 (11th Cir. 2020) (holding that Eleventh Circuit precedent foreclosed the argument that the felon-in-possession statute was unconstitutional, facially and as applied, under the Commerce Clause); United States v. Wright, 607 F.3d 708, 715–16 (11th Cir. 2010) (holding that section 922(g) was constitutional as applied because the "government established that the firearms involved in Wright's offense were manufactured outside of Florida, the state in which the offense took place," which meant "the firearms necessarily traveled in

¹ We review de novo the constitutionality of statutes. United States v. Scott, 263 F.3d 1270, 1271 (11th Cir. 2001).

interstate commerce and therefore satisfied the minimal nexus requirement"); Scott, 263 F.3d 1270 (holding that recent Supreme Court cases had not modified or overturned the Eleventh Circuit precedent upholding the felon-in-possession statute); United States v. Nichols, 124 F.3d 1265, 1266 (11th Cir. 1997) (holding that section 922(g) was not unconstitutional under the Commerce Clause); United States v. McAllister, 77 F.3d 387, 389–91 (11th Cir. 1996) ("We hold that [section] 922(g)(1) is not an unconstitutional exercise of Congress's power under the Commerce Clause."). Like the district court, we are bound by our prior holdings on the same issue until the Supreme Court or the en banc court hold otherwise. See United States v. Steele, 147 F.3d 1316, 1318 (11th Cir. 1998) (en banc) ("The law of this circuit is emphatic that only the Supreme Court or this court sitting en banc can judicially overrule a prior panel decision." (quotation marks omitted)). Thus, we affirm Powell's felon-in-possession conviction.

AFFIRMED.

IN THE CIRCUIT COURT OF THE SECOND
JUDICIAL CIRCUIT, IN AND FOR LEON
COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO.: 16-CF-2647

vs.

WILLIE POWELL

PLEA AND ACKNOWLEDGMENT OF RIGHTS

I hereby enter a plea of () no contest () guilty in the following criminal offense(s), withdrawing my previous plea of not guilty.

BY (WILLIE POWELL)

Count <u>1</u>	Offense <u>POSS. OF F/A.</u>	Max/Min Penalty <u>15 yrs. DOL</u>
Count <u>2</u>	Offense <u>POSS. OF CONT. SUB.</u>	Max/Min Penalty <u>5 yrs. DOL</u>
Count <u>3</u>	Offense <u>POSS OF DRUG PARA.</u>	Max/Min Penalty <u>1 yr. JAIL</u>
Count <u>4</u>	Offense <u>NO VALID DL</u>	Max/Min Penalty <u>(0 DAYS JAIL)</u>
Count _____	Offense _____	Max/Min Penalty _____

My plea is entered with the understanding that the State has agreed or does not object to the following disposition of my case:

Jail Credit _____

16-1512: ADJUDICATION OF GUILT ON CTS. 1 & 2, (CREDIT FOR TIME SERVED)
CTS 3 & 4 - ADJUDICATION OF GUILT, SENTENCED TO 60 DAYS IN
JAIL, WITH CREDIT FOR 60 DAYS, SENTENCE TO 90 DAYS
(CONCURRENT w/ CASES 16-226-CF (GARDEN) + 16-102-CF (LISTER))

Defendant must provide a DNA Sample as authorized or required by Statute for all felonies defined by chapters 782, 784, 794, 800, 810, 812, 787 & 790.

Court Costs \$ 1,235.18 P.D. Fee \$ 50.00 P.D. LAF \$ 50.00 COP\$ 100
(1) Judge Fla. Statute 27.52(1)(b) Fla. Statute 938.29(1) Fla. Statute 938.27(8)

My plea is entered with the acknowledgment and understanding of the following:

- 1) I understand that the judge will place me under oath to question me about this plea. I must answer the judge's questions truthfully, and if I make a false statement while under oath I could be prosecuted for perjury.
- 2) I understand that a plea of not guilty denies my guilt, a plea of guilty admits my guilt, and a plea of no contest means that I will not contest the evidence against me. I also understand that if the judge accepts this plea of guilty or no contest, there will be no trial and I will be sentenced based on my plea.
- 3) I understand the nature of the charges to which I am pleading, and I am aware of the maximum and minimum penalties. My lawyer has informed me of the facts the State would have to prove before I could be found guilty and discussed with me any possible defenses that could be raised in my case. I am satisfied with my lawyer's advice and help.
- 4) I understand that if the judge accepts this plea, I give up the right to a trial, the right to require the State to prove the charge(s) against me beyond a reasonable doubt, the right to have a jury decide whether I am guilty or not guilty, the right to see and hear the witnesses against me and to have my lawyer question them, the right to subpoena and present witnesses or other evidence or any defenses I may have, and to testify or remain silent as I choose.

Filed in open court _____

CLERK
OWEN MARSHALL
CLERK & CLERK'S ROLLER
LEON COUNTY, FLORIDA

2021 MAY 28 A 10:10

FILED

(Sign on Reverse Side After Reading Both Sides Carefully)

5) I understand that by pleading guilty or no contest I am giving up the right to appeal all matters relating to the final judgment including the issue of my guilt or innocence. If the judge accepts this plea, the only issues I will be able to appeal are those relating to my sentence and the judge's authority to hear my case. I understand that I have 30 days to appeal the court's judgment and sentence, and if I cannot afford a lawyer, one will be appointed for me.

6) I understand that if I am not a United States citizen, a plea of guilty or no contest could result in my deportation.

7) If the offense to which I am entering this plea is a sexually violent offense or an offense that was sexually motivated, or if I have been previously convicted of such an offense in any state or federal court, I may be subject to involuntary commitment as a sexually violent offender under the "Jimmy Ryce Act" when my sentence is completed. Further, I have been advised of the registration of other requirements of sections 775.21 (Sexual Predator), 943.0435 (Sexual Offender) and 944.607 (Sexual Offender), F.S.

8) If I violate the terms of any community supervision, and the violation(s) are found to be willful and substantial, I later may be sentenced to the maximum penalty permitted by law as indicated on the reverse of this plea and rights form. If I am placed on probation, I will be required to pay a monthly cost of supervision fee.

9) The judge will assess various types of financial costs (restitution, costs, fines, surcharges and attorney's fees) against me. The failure to pay any of my financial obligations may result in my driving privileges being suspended. A conviction for certain offense may also result in my driving privileges being suspended by the Department of Highway Safety. A charge involving controlled substances (drugs) is one of these offenses. I have discussed this possibility with my attorney.

10) My lawyer has explained to me that this plea and sentence may be used in the future to enhance criminal penalties against me should I be convicted of a new offense.

11) My lawyer has reviewed the nature of the evidence in this case with me. I am not aware of the existence of any physical evidence that could be tested for DNA purposes that would tend to show that I am innocent of this charge.

12) I have carefully read both pages of this form, and I understand all of the rights and duties explained in this form. I state to the Court that I am not under the influence of medicine, drugs or alcohol, that no one forced or threatened me to enter this plea, and that I am entering this plea freely and voluntarily. No one has promised me anything other than what has been stated here in open court before the judge. I am entering this plea because I acknowledge my guilt, or I believe it is in my best interest to do so. I have asked my attorney all of the questions I have about my case and this plea and I have received complete and satisfactory answers to my questions.

I state to the Court that I am not under the influence of drugs or alcohol, that no one forced or threatened me to enter this plea, and that I am entering this plea freely and voluntarily. I acknowledge that I am entering this plea because I believe it is in my best interest.

SWORN this 20 day of May, 2021.

Willie Yowell
Defendant

I hereby certify that I am counsel for the defendant and that I have informed the defendant of the nature of each charge against him/her, the maximum penalty, any applicable minimum penalty, the required elements of proof, and any possible defenses. I believe the defendant understands the rights and duties explained in this plea form and that the defendant is entering this plea freely and voluntarily with a full and complete understanding of the consequences.

R.H.
Counsel for the Defendant

R. T. Russell
Circuit Judge

Plea Accepted and Plea Form filed by: