

No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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JAMES LEON HIGGINS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

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/s/ Adam Nicholson

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- Appendix A Judgment and Opinion of Fifth Circuit, CA No. 21-10544, dated November 22, 2021, *United States v. Higgins*, 2021 WL 5458121(5th Cir. Nov. 22, 2021) (unpublished).
- Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered May 21, 2021.  
*United States v. Higgins*, Dist. Court 4:21-CR-00015-P-1.
- Appendix C Factual Resume filed January 27, 2021 in United States District Court for the Northern District of Texas for Defendant, James Leon Higgins.  
*United States v. Higgins*, Dist. Court 4:21-CR-00015-P-1.

## APPENDIX A

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

November 22, 2021

Lyle W. Cayce  
Clerk

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No. 21-10544  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

JAMES LEON HIGGINS,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:21-CR-15-1

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Before JOLLY, WILLETT, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:\*

James Leon Higgins appeals his guilty plea conviction for possessing a firearm following a felony conviction, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), and his above-guidelines sentence of 64 months in prison. He raises arguments relating to the constitutionality of § 922(g)(1) and the

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-10544

sufficiency of the factual basis in support of his guilty plea. The Government has filed a motion for summary affirmance, which Higgins does not oppose. In the alternative, the Government seeks an extension of time to file its brief. For the following reasons, we dispense with further briefing and AFFIRM.

First, Higgins argues that § 922(g)(1) is unconstitutional as interpreted by this court, as there is no requirement to show that the weapon crossed state lines in the furtherance of interstate commerce or that the defendant's possession resulted from an engagement in interstate commerce. As he concedes, these arguments are foreclosed. *See United States v. Alcantar*, 733 F.3d 143, 146 (5th Cir. 2013).

Higgins next argues that the factual basis in support of his guilty plea is insufficient because it does not establish that he knew that the firearm had traveled in interstate commerce. We have concluded that a § 922(g)(1) conviction does not require proof that a defendant knew that the firearm had traveled in interstate commerce. *See United States v. Dancy*, 861 F.2d 77, 81 (5th Cir. 1988). Higgins does not articulate any argument that this specific holding in *Dancy* has been unequivocally overruled by *Rehaif v. United States*, 139 S. Ct. 2191, 2196 (2019). *See Alcantar*, 733 F.3d at 145–46 (discussing this court's rule of orderliness).

In light of the foregoing, the Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time to file an appellate brief is DENIED as unnecessary, and the judgment of the district court 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.

JAMES LEON HIGGINS

Case Number: 4:21-CR-00015-P(01)  
U.S. Marshal's No.: 15513-509  
Douglas Allen, Assistant U.S. Attorney  
Loui Itoh, Attorney for the Defendant

On January 27, 2021 the defendant, JAMES LEON HIGGINS, entered a plea of guilty as to Count One of the Information filed on January 25, 2021. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	Felon in Possession of Firearm	9/26/2020	One

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Information filed on January 25, 2021.

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 May 20, 2021.



MARK T. PITTMAN  
U.S. DISTRICT JUDGE

Signed May 21, 2021.

Judgment in a Criminal Case  
Defendant: JAMES LEON HIGGINS  
Case Number: 4:21-CR-00015-P(1)

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### IMPRISONMENT

The defendant, JAMES LEON HIGGINS, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Sixty-Four (64) months** as to Count One of the Information filed on January 25, 2021. This sentence shall run concurrently with any future sentence which may be imposed in Case Nos. 1660709D and 1660710D in the 396th Judicial District Court, Tarrant County, Texas.

The Court recommends to the Bureau of Prisons that the defendant be incarcerated at a facility as close to the Fort Worth, TX area as possible. The Court further recommends to the BOP that the defendant be allowed to participate in the Residential Drug Treatment Program, and any educational and vocational training programs, if eligible.

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 **Three (3) years** as to Count One of the Information filed on January 25, 2021.

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

- 1) The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame;
- 2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed;
- 3) The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer;
- 4) The defendant shall answer truthfully the questions asked by the probation officer;
- 5) The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change;
- 6) The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observed in plain view;

Judgment in a Criminal Case

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Defendant: JAMES LEON HIGGINS

Case Number: 4:21-CR-00015-P(1)

- 7) The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her employment (such as the position or the job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change;
- 8) The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer;
- 9) If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours;
- 10) The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed , or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers);
- 11) The defendant shall not act or make an agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court;
- 12) If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk; and,
- 13) The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

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 U.S. probation officer;

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;

Judgment in a Criminal Case

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Defendant: JAMES LEON HIGGINS

Case Number: 4:21-CR-00015-P(1)

pay the assessment imposed in accordance with 18 U.S.C. § 3013;

participate in an outpatient 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; and,

participate in mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered (copayment) at a 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**

Pursuant to 18 U.S.C. §982(a)(1) and 28 U.S.C. § 2461(c), it is hereby ordered that the defendant's interest in the following property is condemned and forfeited to the United States: a Taurus, Model PT 1911, .45-caliber pistol, bearing Serial No. NGU58687.

Judgment in a Criminal Case  
Defendant: JAMES LEON HIGGINS  
Case Number: 4:21-CR-00015-P(1)

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**RETURN**

I have executed this judgment as follows:

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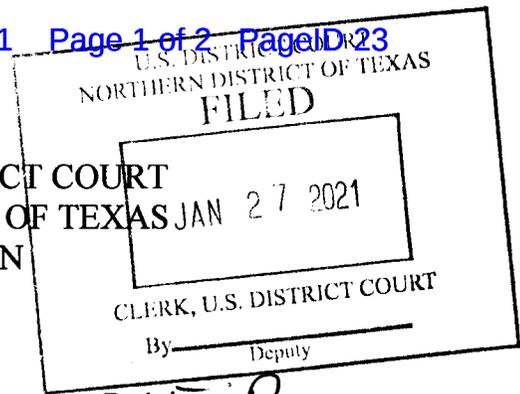
Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

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United States Marshal

BY \_\_\_\_\_  
Deputy Marshal

## APPENDIX C



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

UNITED STATES OF AMERICA

v.

JAMES LEON HIGGINS (01)

No. 4:21-CR-015-P

**FACTUAL RESUME**

**INFORMATION:** Count One: Felon in Possession of Firearm in violation of 18 U.S.C. § 922(g)(1)

**PLEA:** Count One: Felon in Possession of Firearm in violation of 18 U.S.C. § 922(g)(1)

**MAXIMUM PENALTY:**

- a. fine not to exceed \$250,000.00;
- b. imprisonment of not more than 10 years, or both such fine and imprisonment;
- c. a term of supervised release of up to three (3) years. If the defendant violates any condition of supervised release, the Court may revoke such term of supervised release and require the defendant to serve an additional period of confinement;
- d. restitution to victims or to the community, which may be mandatory under the law, and which the defendant agrees may include restitution arising from all relevant conduct, not limited to that arising from the offense of conviction alone;
- e. mandatory special assessment \$100;
- f. costs of incarceration and supervision.

**ELEMENTS OF THE OFFENSE:**

In order to establish the offense alleged in count one of the indictment, the government must prove the following elements beyond a reasonable doubt:

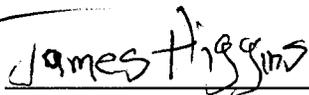
That on the date and location alleged in count one of the indictment:

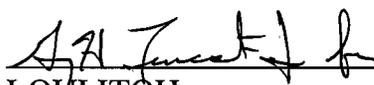
- First: The defendant knowingly possessed the described firearm;
- Second: That before the defendant possessed the described firearm, the defendant had been convicted in a court of a crime punishable by imprisonment for a term in excess of one year, that is, a felony offense;
- Third: The defendant knew that he had been convicted in a court of a crime punishable by imprisonment for a term in excess of one year; and
- Fourth: That the defendant's possession of the described firearm was in and affecting interstate commerce, that is, before the defendant possessed the described firearm, it had traveled at some time from one state to another.

**STIPULATION OF FACTS:**

On or about September 26, 2020, in the Fort Worth Division of the Northern District of Texas, the defendant, James Leon Higgins, knowingly and unlawfully possessed in and affecting interstate and foreign commerce the following firearm: one Taurus, model PT 1911, .45 caliber pistol, bearing serial number NGU58687. Prior to possessing the firearm, Higgins had been convicted of a crime punishable by imprisonment for a term in excess of one year, and he knew he had been convicted of such an offense. Prior to Higgins possessing the firearm, it had traveled from one state to another.

SIGNED on this the 27<sup>th</sup> day of January 2021.

  
\_\_\_\_\_  
JAMES LEON HIGGINS  
Defendant

  
\_\_\_\_\_  
LOUI ITOH  
Attorney for Defendant