

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MARK ANTHONY ROY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX

/s/ Kevin Joel Page

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INDEX TO APPENDICES

Appendix A Opinion of Fifth Circuit, CA No. 22-10677, *United States v. Roy*, 2023 WL 3073266 (5th Cir. Apr. 25, 2023)(unpublished).

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered July 11, 2022.
United States v. Roy, Dist. Court 4:21-CR-00216-P.

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 22-10677
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 25, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MARK ANTHONY ROY,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:21-CR-216-1

Before WIENER, ELROD, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Mark Anthony Roy pleaded guilty to possession of a firearm after a felony conviction, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The district court sentenced him to 75 months of imprisonment and three years of supervised release. Roy contends that § 922(g)(1) is unconstitutional.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 22-10677

Because Roy did not challenge the constitutionality of § 922(g) before the district court, we review only for plain error. *See United States v. Knowles*, 29 F.3d 947, 950 (5th Cir. 1994). To show plain error, the appellant must show a forfeited error that is clear or obvious and that affects his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If the appellant makes such a showing, this court has the discretion to correct the error but only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.*

Roy argues that § 922(g) is unconstitutional because it exceeds Congress's power under the Commerce Clause. However, this argument is foreclosed by *United States v. Alcantar*, 733 F.3d 143 (5th Cir. 2013). *See United States v. Perryman*, 965 F.3d 424, 426 (5th Cir. 2020).

Roy also asserts that the Supreme Court's recent decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), suggests that § 922(g)(1) is unconstitutional. An error is not clear or obvious where an issue is disputed or unresolved, or where there is an absence of controlling authority. *United States v. Rodriguez-Parra*, 581 F.3d 227, 230-31 (5th Cir. 2009). In fact, "[e]ven where the argument requires only extending authoritative precedent, the failure of the district court [to do so] cannot be plain error." *Wallace v. Mississippi*, 43 F.4th 482, 500 (5th Cir. 2022) (internal quotation marks and citation omitted). Because there is no binding precedent explicitly holding that § 922(g)(1) is unconstitutional and because it is not clear that *Bruen* dictates such a result, Roy is unable to demonstrate an error that is clear or obvious. *See Rodriguez-Parra*, 581 F.3d at 230-31.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.
MARK ANTHONY ROY

Case Number: 4:21-CR-00216-P(01)
U.S. Marshal's No.: 55513-509
P.J. Meitl, Assistant U.S. Attorney
Brook Antonio, Attorney for the Defendant

On September 22, 2021 the defendant, MARK ANTHONY ROY, entered a plea of guilty as to Count One of the Indictment filed on August 11, 2021. 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 Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	Possession of a Firearm by a Convicted Felon	6/28/2021	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 Indictment filed on August 11, 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 July 7, 2022.



MARK T. PITTMAN
U.S. DISTRICT JUDGE

Signed July 11, 2022.

Judgment in a Criminal Case
Defendant: MARK ANTHONY ROY
Case Number: 4:21-CR-00216-P(1)

Page 2 of 5

IMPRISONMENT

The defendant, MARK ANTHONY ROY, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Seventy-Five (75) months** as to Count One of the Indictment filed on August 11, 2021. This sentence shall run concurrently with any future sentence which may be imposed in Case No. 1690821D, in the 297th Judicial District Court, Tarrant County, Fort Worth, which is related to the instant offense.

The Court recommends to the Bureau of Prisons that the defendant be incarcerated at a facility as close to Fort Worth, TX as possible.

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 Indictment filed on August 11, 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
Defendant: MARK ANTHONY ROY
Case Number: 4:21-CR-00216-P(1)

Page 3 of 5

- 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
Defendant: MARK ANTHONY ROY
Case Number: 4:21-CR-00216-P(1)

Page 4 of 5

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 outpatient 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 Stoege, Model STR-9C, 9-millimeter caliber, bearing Serial No. T6429-21S03662.

Judgment in a Criminal Case
Defendant: MARK ANTHONY ROY
Case Number: 4:21-CR-00216-P(1)

Page 5 of 5

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