

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

WALTER LEONARD JENKINS,

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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Appendix A Opinion of Fifth Circuit, CA No. 22-11066, dated August 1, 2023,
United States v. Jenkins, 2023 WL 4904354 (5th Cir. Aug. 1, 2023)
(unpublished).

Appendix B Judgment and Sentence of the United States District Court
for the Northern District of Texas, entered October 26, 2022.
United States v. Jenkins, Dist. Court 4:22-CR-155-Y-1.

Appendix C Factual Resume in United States v. Jenkins, Dist. Court 4:22-CR-155
filed June 29, 2022.

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 22-11066
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
August 1, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

WALTER LEONARD JENKINS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CR-155-1

Before KING, HAYNES, and HIGGINSON, *Circuit Judges.*

PER CURIAM:*

Walter Leonard Jenkins appeals his 60-month sentence for possessing a firearm as a convicted felon. Although the advisory guidelines range was 30 to 37 months of imprisonment, the district court applied an upward departure pursuant to U.S.S.G. § 4A1.3. Jenkins challenges the procedural reasonableness of his sentence.

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

No. 22-11066

First, Jenkins argues that the court's statement that he continued to engage in criminal activity while on supervision is clearly erroneous as a factual matter. Jenkins did not object to the procedural reasonableness of his sentence in the district court. Thus, we review the procedural reasonableness of the sentence for plain error. *See United States v. Mondragon-Santiago*, 564 F.3d 357, 362-64 (5th Cir. 2009). While the presentence report stated that Jenkins's parole records did not reveal any filed violations, it detailed that he was twice arrested and convicted in 2014 while on parole for his 2012 burglary. Then, in 2017 and 2018, he was again arrested and convicted twice while serving parole for his 2015 assault. The court thus did not err in finding that Jenkins engaged in criminal activity while on supervision. *See United States v. Lavalais*, 960 F.3d 180, 189 (5th Cir. 2020).

Second, Jenkins asserts that the district court factually erred in finding that his criminal conduct has continued to escalate to involve violence and firearms. But as a juvenile in 2001, Jenkins committed a burglary. When he turned 18, he committed two assaults. He then committed another burglary in 2012 and another assault in 2015. Finally, three years after his release from prison, Jenkins beat his teenage son and possessed a firearm, leading to his instant conviction. Jenkins's prior sentences were not considered as relevant conduct, and he did not receive any adjustments to his base offense level because of them. Thus, the district court was free to consider his firearm possession in deciding whether to depart, and Jenkins possessing a firearm with his criminal history demonstrated a "lack of deterrence and continued criminal activity," which are proper grounds for departing under § 4Al.3. *Lavalais*, 960 F.3d at 189.

Finally, Jenkins argues that the statute of conviction, 18 U.S.C. § 922(g) is unconstitutional under the Commerce Clause. As he concedes,

No. 22-11066

his argument is foreclosed. *See United States v. Alcantar*, 733 F.3d 143, 145 (5th Cir. 2013).

Accordingly, 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.

WALTER LEONARD JENKINS

Case Number: 4:22-CR-155-Y(1)

M. Levi Thomas, assistant U.S. attorney

John J. Stickney, attorney for the defendant

On June 29, 2022, the defendant, Walter Leonard Jenkins, 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(g)(1) and 924(a)(2)	Possession of a Firearm by a Convicted Felon	September 4, 2021	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 October 25, 2022.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed October 26, 2022.

IMPRISONMENT

The defendant, Walter Leonard Jenkins, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 60 months on count one of the one-count indictment. This sentence shall run concurrently with any future sentences that may be imposed in case nos. 1699194D, 1699369D, and 1699371D, Criminal District Court No. 3, Tarrant County, Texas.

The Court recommends that the defendant be incarcerated at a facility within the Northern District of Texas, if possible, and that he be enrolled in trade and rehabilitation courses, 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 3 years on count one of the one-count indictment.

The defendant, while on supervised release, shall comply with the standard conditions recommended by the U. S. Sentencing Commission at §5D1.3(c) of the United States Sentencing Commission Guidelines Manual, and 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, as authorized by the Justice for All Act of 2004;

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 must 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;

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

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: a Sig Sauer, model P238, .380-caliber pistol, bearing serial no. 27B348982.

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

APPENDIX C

ORIGINAL

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

UNITED STATES OF AMERICA

v.

WALTER LEONARD JENKINS (01)

No. 4:22-CR-155-Y

JUN 29 2022

U.S. DISTRICT COURT

FACTUAL RÉSUMÈ

I. Plea:

The defendant is pleading guilty to Count One: Felon in Possession of a Firearm, in violation of 18 U.S.C. § 922(g)(1) and § 924(a)(2).

II. Penalties:

The penalties the Court can impose include:

- a. imprisonment for a period not to exceed ten (10) years;
- b. a fine not to exceed \$250,000;
- c. a term of supervised release not to exceed three (3) years, which may be mandatory under the law and will follow any term of imprisonment. If the defendant violates any condition of supervised release, the Court may revoke such release term and require that the defendant serve an additional period of confinement;
- d. a mandatory special assessment of \$100;
- e. restitution to victims or to the community;
- f. forfeiture of firearms and ammunition; and
- g. costs of incarceration and supervision.

III. Potential Statutory Enhancement:

Under 18 U.S.C. § 924(e), the Armed Career Criminal Act, if the Court finds at the time of sentencing that the defendant has three previous convictions for a violent felony or a serious drug offense, or both, the maximum penalty is enhanced to include:

- a. Imprisonment for not less than 15 years and a maximum of Life; and
- b. A supervised-release term not to exceed five (5) years, which may be mandatory under law and will follow any imprisonment term. If the defendant violates any of the supervised-release conditions, he could be imprisoned for the entire supervised-release term, resulting in an additional period of confinement.

IV. Elements of the Offense:

The elements the government must prove beyond a reasonable doubt to establish the offense alleged in Count One are:

First: That the defendant knowingly possessed a firearm;

Second: Before the defendant possessed the firearm, he had been convicted in a court of a crime punishable by imprisonment for a term exceeding one year, that is a felony offense;

Third: At the time the defendant possessed the firearm, he knew he had been convicted in a court of a crime punishable by imprisonment for a term exceeding one year, that is a felony offense; and

Fourth: The possession of the firearm affected interstate or foreign commerce; that is: before the defendant possessed the charged firearm, it had traveled at some time from one state to another or between any part of the United States and any other country.

V. Stipulated Facts:

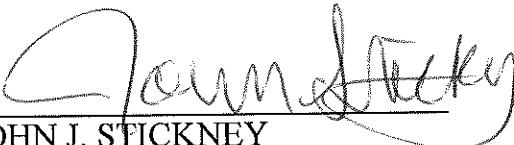
On September 4, 2021, in the Northern District of Texas, the defendant, **Walter Leonard Jenkins**, knowing that he had been convicted of a crime punishable by imprisonment for a term in excess of one year, did knowingly possess the following firearm: a Sig Sauer, Model P238, .380 caliber pistol, bearing serial number 27B348982.

On that date, Fort Worth Police Department Officers responded to Meadowbrook Drive, in Fort Worth, Texas, as a result of a 911 call. Officers encountered **Jenkins**, and **Jenkins** admitted he had a firearm and that the firearm was on the other side of a brick wall. Officers recovered the firearm, which was found to be a Sig Sauer, Model P238, .380 caliber pistol, bearing serial number 27B348982. Prior to possessing the firearm, **Jenkins** 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 **Jenkins** possessing the firearm, it had traveled at some time from one state to another or between any part of the United States and any other country.

AGREED AND STIPULATED on this 22nd day of June, 2022.



WALTER LEONARD JENKINS
Defendant



JOHN J. STICKNEY
Counsel for Defendant