

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOEL MILES,

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 Judgment, Opinion, and Order of Fifth Circuit, CA No. 22-10932,
United States v. Miles, 2024 WL 1827825 (5th Cir. Apr. 26, 2024)
(unpublished).

Appendix B Judgment and Sentence of the United States District Court
for the Northern District of Texas, entered September 23, 2022.
United States v. Miles, Dist. Court 4:22-CR-140-O.

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 22-10932

United States Court of Appeals
Fifth Circuit

FILED

April 26, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOEL MILES,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CR-140-1

Before RICHMAN, *Chief Judge*, and OLDHAM and RAMIREZ, *Circuit Judges*.

PER CURIAM:

Fort Worth police arrested Joel Miles after finding an unregistered short-barreled rifle in his car. Miles is a convicted felon, so federal prosecutors charged him with violating 18 U.S.C. § 922(g)(1). The parties then entered into a plea agreement by which the government agreed to dismiss the § 922(g)(1) charge. In exchange, Miles agreed to plead guilty to possessing an unregistered short-barreled rifle in violation of 26 U.S.C. § 5861(d). Miles also agreed to waive his right to appeal the § 5861(d)

No. 22-10932

conviction.* The district court accepted the plea agreement and imposed a 115-month sentence.

Miles now seeks to appeal his § 5861(d) conviction, even though knowingly and voluntarily waived the right to do so in his plea agreement. Miles contends that because short-barreled rifles are in common use, Congress cannot regulate them under the Second Amendment as interpreted by the Supreme Court in *New York State Rifle & Pistol Assoc. v. Bruen*, 597 U.S. 1 (2022). And he alleges his appeal waiver was ineffective as to that claim because in his view, a defendant cannot waive the right to assert that his statute of conviction is unconstitutional.

Miles' argument is foreclosed. *See United States v. Portillo-Munoz*, 643 F.3d 437, 442 (5th Cir. 2011) (enforcing an appeal waiver against a constitutional challenge to a statute of conviction); *see also United States v. Ford*, 688 F. App'x 309, 310–11 (5th Cir. 2017) (per curiam) (citing *Portillo-Munoz* for the proposition that constitutional claims “may be waived by a valid appeal waiver”); *United States v. Caldwell*, 38 F.4th 1161 (5th Cir. 2022) (per curiam) (holding defendants can waive the right to collaterally attack a conviction on constitutional grounds). Miles therefore waived the right to press his Second Amendment claim on appeal.

APPEAL DISMISSED.

* The waiver was subject to limited exceptions that Miles concedes are not relevant in this case.

United States Court of Appeals for the Fifth Circuit

No. 22-10932
Summary Calendar

United States Court of Appeals

Fifth Circuit

FILED

April 26, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOEL MILES,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CR-140-1

Before RICHMAN, *Chief Judge*, OLDHAM, and RAMIREZ, *Circuit Judges*.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the appeal is DISMISSED.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying

a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. *See FED. R. APP. P. 41(b).* The court may shorten or extend the time by order. *See 5TH CIR. R. 41 I.O.P.*

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.
JOEL MILES
Case Number: 4:22-CR-00140-O(01)
U.S. Marshal's No.: 98596-509
Matthew Weybrecht, Assistant U.S. Attorney
Andrea Aldana, Attorney for the Defendant

On June 15, 2022 the defendant, JOEL MILES, entered a plea of guilty as to Count One of the Superseding Information filed on June 8, 2022. 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>
<u>26 U.S.C. §§ 5841, 5861(d) and 5871</u>	Possession of an Unregistered Short- Barrel Rifle	04/05/2022	One

The defendant is sentenced as provided in pages 2 through 4 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 Superseding Information filed on June 8, 2022.

Upon motion of the government all remaining counts are dismissed, as to this defendant only.

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 23, 2022.


REED O'CONNOR
U.S. DISTRICT JUDGE

Signed September 23, 2022.

Judgment in a Criminal Case

Page 2 of 4

Defendant: JOEL MILES

Case Number: 4:22-CR-00140-O(1)

IMPRISONMENT

The defendant, JOEL MILES, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **ONE HUNDRED FIFTEEN (115) MONTHS** as to Count One of the Superseding Information filed on June 8, 2022. This sentence shall run concurrently with any future sentence which may be imposed in Case Nos. 1725209D, 1725211D, 1725212D, 1725215D, and 1725216D in Criminal District Court No. 3 of Tarrant County, Texas.

The Court recommends to the BOP that the defendant be allowed to participate in the Residential Drug Treatment Program, if eligible. The Court makes a non-binding recommendation to the BOP that Defendant, if appropriately classified, be allowed to serve his term of imprisonment at an FCI facility within the Northern District of 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 **THREE (3) YEARS** as to Count One of the Superseding Information filed on June 8, 2022.

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

- (1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
- (2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
- (3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
- (4) You must answer truthfully the questions asked by your probation officer.
- (5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must 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, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- (6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
- (7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you

Judgment in a Criminal Case

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Defendant: JOEL MILES

Case Number: 4:22-CR-00140-O(1)

plan to change where you work or anything about your work (such as your position or your job responsibilities), you must 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, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

- (8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- (9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
- (10) You must 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) You must not act or make any 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 you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
- (13) You must 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 illegally possess controlled substances;

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

not possess a firearm, ammunition, destructive device, or any dangerous weapon;

refrain from any unlawful use of a controlled substance. You 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;

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

take notice that if this judgment imposes a fine, you must pay in accordance with the Schedule of Payments sheet of this judgment;

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,

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Defendant: JOEL MILES

Case Number: 4:22-CR-00140-O(1)

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 Smith & Wesson, Model M&P 15, .223-caliber rifle, bearing Serial No. TE43680 and ammunition.

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