

No. __-_____

IN THE
SUPREME COURT OF THE UNITED STATES
_____ TERM

FREDDIE COUFAX SWAGGERTY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit**

APPENDIX

ELIZABETH B. FORD
Federal Community Defender

JENNIFER NILES COFFIN
Assistant Federal Defender
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Counsel for Freddie Coufax Swaggerty

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 16-6677

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Oct 18, 2017
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Appellee,)	
)	
v.)	ON APPEAL FROM THE UNITED
)	STATES DISTRICT COURT FOR
FREDDIE COUFAX SWAGGERTY,)	THE EASTERN DISTRICT OF
)	TENNESSEE
Defendant-Appellant.)	
)	
)	

ORDER

Before: GUY, BATCHELDER, and COOK, Circuit Judges.

Freddie Coufax Swaggerty, represented by counsel, appeals the district court’s judgment sentencing him to 188 months of imprisonment for being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1). The parties have waived oral argument and, upon examination, the panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

A jury convicted Swaggerty on two counts of violating § 922(g)(1). During the trial and again prior to his sentencing hearing, Swaggerty moved for a judgment of acquittal on the ground that § 922(g)(1) unconstitutionally infringes his Second Amendment right to possess a firearm. The district court denied both motions, determined that Swaggerty is an armed career criminal under 18 U.S.C. § 924(e)(1), and sentenced him to concurrent terms of 188 months of imprisonment. Swaggerty filed a timely appeal and argues that his convictions must be vacated because § 922(g)(1) violates the Second Amendment.

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A constitutional challenge to a criminal conviction is a question of law that we review de novo. See *United States v. Watkins*, 509 F.3d 277, 280 (6th Cir. 2007). We have repeatedly rejected Second Amendment challenges to § 922(g)(1) by convicted felons. See *United States v. Carey*, 602 F.3d 738, 741 (6th Cir. 2010); *United States v. Whisnant*, 391 F. App'x 426, 430 (6th Cir. 2010); *United States v. Khami*, 362 F. App'x 501, 507-08 (6th Cir. 2010); *United States v. Frazier*, 314 F. App'x 801, 807 (6th Cir. 2008) (collecting cases). We have also concluded that the United States Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), confirms the constitutionality of prohibiting convicted felons from possessing firearms. See *United States v. Greeno*, 679 F.3d 510, 517 (6th Cir. 2012); *Carey*, 602 F.3d at 741.

Swaggerty's more specific challenges to § 922(g)(1) are foreclosed by our existing precedent. Swaggerty argues that to establish a § 922(g)(1) violation, the government should be required to prove that the defendant knew that his right to possess a firearm had not been restored. The government, however, is required to prove only that the defendant knowingly possessed a firearm after sustaining a felony conviction; it is not required to prove that the defendant knew that his possession of the firearm was illegal. See *United States v. Beavers*, 206 F.3d 706, 710 (6th Cir. 2000); *United States v. McCormick*, 517 F. App'x 411, 414 (6th Cir. 2013); *United States v. Davis*, 27 F. App'x 592, 600 (6th Cir. 2001).

Swaggerty also argues that § 922(g)(1) fails to give fair notice of the conduct it prohibits due to differences in the states' laws on the restoration of gun possession rights. This is a variation of Swaggerty's argument that the government must prove that he knew that his possession of a firearm was illegal and is without merit for the reasons just discussed. Additionally, Swaggerty's numerous prior felony convictions provided sufficient notice that the government might restrict his right to possess a firearm. See *United States v. Napier*, 233 F.3d 394, 397-99 (6th Cir. 2000); *Beavers*, 206 F.3d at 710.

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk



TENNESSEE DEPARTMENT OF CORRECTION
DIVISION OF ADMINISTRATIVE SERVICES
CERTIFICATION DOCUMENTATION



PLEASE ATTACH THIS CERTIFICATE PERMANENTLY TO ALL RECORDS

(U.S. Rev. Statutes, Sec. 906. Attestation by Legal Keeper of Records)

STATE OF TENNESSEE

COUNTY OF DAVIDSON

I JOE STROUD, hereby certify, that I am the
(Name of Official Custodian)

CLERK III / TDOC RECORDS MANAGEMENT, of the Tennessee Department
(Official Position)

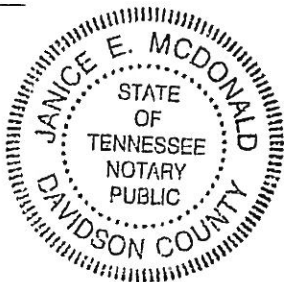
Correction situated in the County and State aforesaid; that in my legal custody as such officer are the original files and records of persons heretofore committed to the Tennessee Department of Correction. The attached hereto are copies of the original records of

FREDDY SWAGGERTY aka FREDDIE KOFAX SWAGGERTY aka FREDDY KOUFAX SWAGGERTY aka FREDDY K. SWAGGERTY aka FREDDY KOUFOX SWAGGERTY aka FREDDY KONFAX SWAGERTY aka FREDDIE SWAGGERTY aka FREDDIE KAUFAX SWAGGERTY aka FREDDY KAUFAX SWAGGERTY aka FREDDY COUFAX SWAGGERTY, #124193

a person heretofore committed to the Tennessee Department of Correction and who served a term of imprisonment therein; that I have compared the foregoing and attached copies with their respective originals now on file in my office and each thereof contains, and is, a full, true and correct transcript and copy from its said original.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of APRIL

20 15



Joe Stroud
JOE STROUD (Signature)

CLERK III / TDOC RECORDS MANAGEMENT
(Official Title)

STATE OF TENNESSEE
COUNTY OF: DAVIDSON

Sworn and subscribed to before me this 27th day of APRIL 20 15

My Commission Expires JANUARY 6, 2017

Janice E. McDonald
JANICE E. McDONALD (Notary Public)

SV



No. 42637

Prison Copy

Tennessee Board of Parole
Certificate of Parole

It appears to the Tennessee Board of Parole that Freddy Swaggerty,
prison number 124193, having been convicted of the offense of burg. 3rd, G.L.
, and sentenced to 4 yrs. in the
county of Cocke, is eligible to be paroled from the Brushy Mtn. Prison,
and that there is reasonable probability that said prisoner will remain at liberty without violating the law. It further be-
ing the opinion of the Tennessee Board of Paroles that the parole of this prisoner is not incompatible with the welfare
of society.

It is hereby ordered that said prisoner be, and hereby is paroled effective May 10, 19 89
subject to the following conditions:

1. I will go directly to my destination, and upon arrival, report immediately to my Parole Officer, under whose supervision I am paroled, unless otherwise directed.
2. I will obey the laws of the United States, or any State in which I may be, as well as any municipal ordinances.
3. I will report all arrests, including traffic violations, immediately, regardless of the outcome, to my Parole Officer.
4. I will not own, possess, or carry any type of deadly weapon (guns, rifles, knives or any illegal weapons). I further understand that under provision of Federal and State Laws, I am subject to prosecution if I violate this condition.
5. I will work steadily at a lawful occupation, and support my dependents (parents, wife, children, and others), to the best of my ability. If I become unemployed, I will immediately report this to my Parole Officer and then begin to look for another job.
6. I will get the permission of my Parole Officer before changing my residence or employment, or before leaving the County of my residence or the State.
7. I will allow my Parole Officer to visit my home, employment site, or elsewhere, and will carry out all instructions he/she gives, and report to my Parole Officer as given instruction to report.
8. I will not use intoxicants (beer, whiskey, wine, etc.) of any kind to excess, or use or have in my possession narcotic drugs or marijuana.
9. I agree to pay all required fees to the supervision and Criminal Injuries Fund.

Special Condition(s) Max. superv.

Parole Plan: Residence 308 Nutmeg St., Newport, TN

Employment Jim Cole, 6816 Kingston Pike, Knox, TN

Parole Officer: F. Hatmaker, Morristown Parole Office, 209 E. Main St.,
Morristown, TN 587-7023 (PB)

This parole shall expire upon the sentence expiration date of June 22, 19 92,
provided the Board is satisfied that the parolee has complied with all conditions of this release.

In witness, we have affixed our signatures this 8th day of May, 19 89

Charles M. Fraughton
Chairman, Board of Parole

Michael Bradley
Director of Parole

I have read, or have had read to me, this Order of Parole, and the statement of Conditions of Parole. I fully understand them, and I agree to comply with such conditions during the period of my parole, this the 10 day of May, 19 89. Further I hereby waive all extradition rights and process, and agree to return to Tennessee voluntarily if at any time prior to my release from parole the Tennessee Board of Parole directs me to do so.

Aleg Rolland
Prison Official or Parole Officer

Freddy Swaggerty
Signature of Parolee



STATE OF TENNESSEE
BOARD OF PROBATION AND PAROLE
 Division of Board Operations
 Parole Certificate



Parole Type

118505

Certificate Type
 Regular

Swaggerty, Freddy – PRISON NUMBER 00124193,

is eligible to be paroled from the the West Tennessee State Penitentiary

and there is reasonable probability that said prisoner will remain at liberty without violating the law. It further being the opinion of the Tennessee Board of Probation and Parole that the parole of this prisoner is not incompatible with the welfare of society.

It is hereby ordered that said prisoner be, and hereby is paroled, subjective to the following conditions, effective: **February 22, 2007**

1. I will proceed directly to my destination and upon arrival report immediately to my Probation/Parole Officer or in any event no later than 72 hours after release.
2. I will obey the laws of the United States or any state, in which I may be, as well as any municipal ordinances.
3. I will report all arrests, including traffic violations, immediately, regardless of the outcome, to my Probation/Parole Officer. I will, when away from my residence, have on my person my parole identification card and present it to the proper authority.
4. I will not own, possess, or carry any type of deadly weapon (guns, rifles, knives) or any illegal weapons.
5. I will work steadily at a lawful occupation. If I become unemployed, I will immediately report this to my Probation/Parole Officer and then begin to look for another job.
6. I will get the permission of my Probation/Parole Officer before changing my residence or employment, or before leaving the county of my residence or the state.
7. I will allow my Probation/Parole Officer to visit my home, employment site, or elsewhere, and will carry out all lawful instructions he/she gives and report to my Probation/Parole Officer as instructed, and will carry out all lawful instructions of the Administrative Case Review Committee, and will comply with a referral to Resource Center programs, if available, by attending, and will submit to electronic monitoring or community service if required.
8. I agree to a search, without a warrant, of my person, vehicle, property, or place of residence by any Probation/Parole officer or law enforcement officer, at any time.
9. I will not use intoxicants (beer, whiskey, wines, etc) of any kind to excess. I will not use or have in my possession marijuana or other illegal drugs. I will submit to drug screens or drug tests as directed by my Probation/Parole Officer.
10. I will waive all extradition rights and processes and agree to return to Tennessee if at any time prior to my release from parole, the Board of Probation and Parole directs that I do so.
11. I agree to pay all required fees to the Supervision and Criminal Injuries fund.
12. I will not engage in any assaultive, abusive, threatening or intimidating behavior. Nor will I participate in any criminal street gang related activities as defined by TCA 40-35-121. I will not behave in a manner that poses a threat to others or myself.
13. If paroled to a detainer(s), I will report to the office designated if released from that detainer before my Tennessee parole expiration date.

SPECIAL CONDITIONS:

1. If convicted of a sex offense, I will abide by the Specialized Parole Conditions for Sex Offenders as adopted by the Board of Probation and Parole.
2. No Job Waiver
3. Substance Abuse Treatment/po Discretion
- 4.
- 5.

Parole Officer: William Bundy Telephone: (423) 587-7023
Location: (P32F) Morristown Probation and Parole Office; 209 East Main Street; Morristown, TN 37814

I fully understand this order of parole, and I agree to comply with such conditions during the period of my parole, this the 22ND day of FEBRUARY, 2007. Further I hereby waive all extradition rights and process and agree to return to Tennessee voluntarily if at any time prior to my release the Tennessee Board of Probation and Paroles directs me to do so. Said parole shall expire upon the sentence expiration date.


 WITNESS SIGNATURE
 Distribution: Central Office, Parole Officer, Parolee, Institution


 PAROLEE SIGNATURE