

No. 17-

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER LESSNER,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

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District of Texas

APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-10245
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
October 25, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CHRISTOPHER LESSNER,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:16-CR-229-1

Before REAVLEY, PRADO, and GRAVES, Circuit Judges.

PER CURIAM:*

Christopher Lessner pleaded guilty to one count of possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). The district court sentenced Lessner to 63 months of imprisonment and a three-year term of supervised release. On appeal, Lessner argues that the district court plainly erred under the Fifth and Sixth Amendments by imposing a sentence based on factual findings that were not supported by proof beyond a reasonable doubt.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

He concedes that his argument is foreclosed under current circuit law, but he raises the claim solely to preserve it for further review.

The Government has filed an unopposed motion for summary affirmance or, alternatively, for an extension of time to file a brief on the merits. Summary affirmance is proper where, among other instances, “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Because Lessner’s arguments are indeed foreclosed by *United States v. Tuma*, 738 F.3d 681 (5th Cir. 2013), the Government’s motion for summary affirmance is GRANTED, and the judgment is AFFIRMED. The alternative motion for an extension of time to file a brief on the merits is DENIED as unnecessary.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 4:16-CR-00229-Y(1)

Frank L. Gatto, assistant U.S. attorney

CHRISTOPHER LESSNER

Michael A. Lehmann, attorney for the defendant

On October 5, 2016, the defendant, Christopher Lessner, entered a plea of guilty to count one of the one-count information. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:

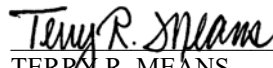
<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE CONCLUDED</u>	<u>COUNT</u>
18 U.S.C. § 922(g)(1)	Felon in Unlawful Firearm Possession	July 30, 2016	One

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 information.

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 February 14, 2017.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed February 15, 2017.

IMPRISONMENT

The defendant, Christopher Lessner, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 63 months on count one of the one-count information. The sentence shall run consecutively to any sentence that may be imposed in case nos. 1292340D, 1297862D and 1292342D, in Tarrant County, Texas, District Court No. 1.

The Court recommends that the defendant be placed in the Institution Residential Drug Abuse Treatment Program and receive psychological counseling, if qualified.

The Court recommends that the defendant be incarcerated at a facility in the Northern District of Texas, if 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 years on count one of the one-count information.

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

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer in a manner and frequency directed by the Court or probation officer;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court; and
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

Defendant: Christopher Lessner

Case Number: 4:16-CR-00229-Y(1)

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not possess a firearm, destructive device, or other dangerous weapon;

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

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;

participate in a 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;

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; and

refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

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

The Court orders, under 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), that the defendant shall forfeit to the United States of America any firearm and ammunition involved in or used in the commission of the offense, including, but not limited to, the following: a Springfield, Model XD9, semi-automatic, 9-millimeter caliber handgun, Serial No. US849452.

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