

United States Court of Appeals for the Fifth Circuit

No. 23-50212
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 15, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ALBERTO JIMENEZ PASTRANA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:22-CR-699-1

Before BARKSDALE, ENGELHARDT, and WILSON, *Circuit Judges*.

PER CURIAM:*

Alberto Jimenez Pastrana challenges his guilty-plea conviction for possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) (prohibiting felons in possession). He contends for the first time on appeal that § 922(g)(1) violates the Second Amendment and the Commerce Clause.

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

No. 23-50212

Pastrana (as he concedes) did not preserve his two constitutional claims in district court. Because he failed to do so, review is only for plain error. *E.g.*, *United States v. Broussard*, 669 F.3d 537, 546 (5th Cir. 2012). Under that standard, Pastrana must show a forfeited plain error (clear-or-obvious error, rather than one subject to reasonable dispute) that affected his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes that showing, we have the discretion to correct the reversible plain error, but generally should do so only if it “seriously affect[s] the fairness, integrity or public reputation of judicial proceedings”. *Id.* (citation omitted).

Pastrana’s Second Amendment contention is grounded in *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022) (announcing rule for assessing whether statute infringes Second Amendment). As our court very recently held: on plain-error review, this claims fails under *Bruen*. *United States v. Jones*, 88 F.4th 571, 574 (5th Cir. 2023).

Additionally, Pastrana’s assertion that § 922(g)(1) is unconstitutional because it exceeds Congress’ Commerce Clause authority is, as he concedes, also foreclosed by our precedent. *United States v. Alcantar*, 733 F.3d 143, 145–46 (5th Cir. 2013) (rejecting Commerce Clause contention because our court is “bound by our prior precedents and . . . [the] issue is foreclosed”). He raises the issue solely to preserve it for possible further review.

AFFIRMED.