

APPENDIX A

United States v. Ketzner, No. 21-cr-00036-GPG-JMC-1(D. Colo. Dec. 8, 2023)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Gordon P. Gallagher

Criminal Action No. 21-cr-00036-GPG-JMC

UNITED STATES OF AMERICA,

Plaintiff,

v.

JASON KETZNER

Defendant.

ORDER

Before the Court is Defendant's Motion to Dismiss the Indictment (D. 27). The Court DENIES the motion for the following reasons.

I. FACTS

Defendant was indicted in this action for possession of a firearm in and affecting interstate and foreign commerce, in violation of 18 U.S.C. § 922(g)(1), on or about November 1, 2020, in the State and District of Colorado, knowing he had previously been convicted of a felony (*see* D. 1). Defendant's Bail Report shows, among other things, six felony convictions for (1) Fifth Degree Drug Possession; (2) Second Degree Drug Possession; (3) Check Forgery; (4) Fifth Degree Drug Possession; (5) Second Degree Drug Possession; and (6) Felon Convicted Crime of Violence – Firearm (D. 19 at 3-5; *see also* D. 20).

II. ANALYSIS

Under Federal Rule of Criminal Procedure 12(b)(3), a defendant may challenge an indictment before trial only when “trial of the facts surrounding the commission of the alleged offense would be of no assistance in determining the validity of the defense.” *United States v. Pope*, 613 F.3d 1255, 1259 (10th Cir. 2010) (citation and internal quotations omitted). An indictment is tested “solely on the basis of the allegations made on its face, and such allegations are to be taken as true.” *United States v. Hall*, 20 F.3d 1084, 1087 (10th Cir. 1994) (citation omitted). Defendant moves to dismiss the indictment on the basis that 18 U.S.C. § 922(g)(1) is unconstitutional after *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022) (*see* D. 27). Defendant concedes that his constitutional challenge is disallowed by Tenth Circuit precedent, citing *Vincent v. Garland*, 80 F.4th 1197, 1199 (10th Cir. 2023) (holding that the ban on felons’ possession of firearms is constitutional post-*Bruen*), but files his motion for preservation purposes.

The U.S. District Court for the District of Colorado has previously held that the prohibition of a weapon by a felon is constitutional under § 922(g) post-*Bruen*. *See United States v. Willis*, No. 22-CR-00186-RMR, 2022 WL 17177470, at *2 (D. Colo. Nov. 23, 2022); *United States v. Gray*, No. 22-CR-00247-CNS, 2022 WL 16855696 (D. Colo. Nov. 10, 2022). This Court adopts the analysis of these cases and sees no reason to depart from Judge Rodriguez and Judge Sweeney’s sound determination that § 922(g) survives the *Bruen* test.

Regardless, precedent from the U.S. Court of Appeals for the Tenth Circuit also requires this Court to dismiss Defendant’s motion. Indeed, this Court is required to follow the precedent of the Tenth Circuit. *United States v. Spedalieri*, 910 F.2d 707, 709 n.2 (10th Cir. 1990). The

Tenth Circuit addressed the constitutionality of § 922(g)(1) post-*Bruen* and held that “*Bruen* did not indisputably and pellucidly abrogate” the Tenth Circuit’s precedential opinion in *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009), which “upheld the constitutionality of the federal ban for any convicted felon’s possession of a firearm.” *Vincent*, 80 F.4th at 1202-02. Thus, Defendant’s arguments are foreclosed by *Vincent* and the Court must deny the motion.

III. CONCLUSION

Accordingly, Defendant’s Motion to Dismiss the Indictment is DENIED (D. 27).

DATED December 8, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'G. P. Gallagher', written over a horizontal line.

Gordon P. Gallagher
United States District Judge