

APPENDICES

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UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 24-4082

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JARMARL THORNTON,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, Senior District Judge. (3:21-cr-00080-REP-1)

Submitted: October 16, 2025

Decided: October 20, 2025

Before KING, AGEE, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Jeremy C. Kamens, Federal Public Defender, Salvatore M. Mancina, Assistant Federal Public Defender, Laura J. Koenig, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Alexandria, Virginia, for Appellant. Erik S. Siebert, United States Attorney, Stephen W. Miller, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jarmarl Thornton pled guilty, pursuant to a conditional plea agreement, to possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1), and possession with intent to distribute fentanyl and cocaine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C). The district court classified Thornton as a career offender and sentenced him to 151 months' imprisonment. Thornton appeals, and we affirm.

Thornton first challenges his § 922(g)(1) conviction as unconstitutional under *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). But as Thornton acknowledges, both his facial and as-applied challenges to § 922(g)(1)'s constitutionality are squarely foreclosed by our decisions in *United States v. Canada*, 123 F.4th 159 (4th Cir. 2024), and *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024).

Next, Thornton challenges his career offender classification by relying on *United States v. Campbell*, 22 F.4th 438, 441-44 (4th Cir. 2022) (holding that West Virginia offense of delivery of crack cocaine, which defined "delivery" to include "attempted transfer," was not a "controlled substance offense" under the Sentencing Guidelines). Thornton contends that his prior drug conviction under Va. Code Ann. § 18.2-248 does not categorically qualify as a controlled substance offense under U.S. Sentencing Guidelines Manual § 4B1.2(b) (2021) because—unlike that operative version of the Guidelines Manual—the statute covers attempt offenses. But we recently rejected the same argument in *United States v. Nelson*, __ F.4th __, __, 2025 WL 2372029, at *4 (4th Cir. Aug. 15, 2025), where we confirmed that Va. Code Ann. § 18.2-248 remains a proper career offender predicate.

Because the arguments Thornton raises on appeal are foreclosed by binding precedent, we affirm the criminal judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: October 20, 2025

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No. 24-4082
(3:21-cr-00080-REP-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

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JARMARL THORNTON

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA

v.

Criminal No. 3:21-cr-80

JARMARL THORNTON,

Defendant.

ORDER

For the reasons set forth on the record during the hearing on September 6, 2023 in United States v. Mitchell, No. 3:23-cr-39, and on the basis of the reasoning from the MEMORANDUM OPINION in United States v. Dai'quan Jarrvel Lane, No. 3:23-cr-62 (E.D. Va.

Aug. 31, 2023) (ECF No. 38),¹ it is hereby ORDERED that MR. THORNTON'S MOTION TO DISMISS COUNT ONE (ECF No. 20) is denied.

It is so ORDERED.

/s/ REP
Robert E. Payne
Senior United States District Judge

Richmond, Virginia
Date: September 13 2023

¹ The Court incorporates and adopts the Memorandum Opinion in Lane that pertained to the § 922(g) charge described therein except that part of Lane which described as dicta the text of District of Columbia v. Heller, 554 U.S. 570 (2008), respecting "longstanding prohibitions on the possession of firearms by felons" and whether they were "presumptively lawful regulatory measures." Lane, ECF No. 38, at 7-9.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA

v.

Criminal No. 3:21cr80

JARMARL THORNTON

MEMORANDUM ORDER

By ORDER (ECF No. 23), the Court denied MR. THORNTON'S MOTION TO DISMISS COUNT ONE (ECF No. 20), *inter alia*, by adopting and incorporating most of the reasoning set forth in the MEMORANDUM OPINION issued by Judge Young in United States v. Dai'quan Jarrvel Lane, Criminal No. 3:23cr62 (Lane, ECF No. 38). Thereafter, Judge Novak, in United States v. Coleman, Criminal No. 3:22cr87 (E.D. Va. Oct. 12, 2023) ("Coleman") issued a MEMORANDUM OPINION (Coleman, ECF No. 22) which, like Lane, resolved a constitutional challenge to 18 U.S.C. § 922(g)(1) which prohibits felons from possessing either firearms or ammunition.

Lane and Coleman differ in deciding whether felons fall within the reach of the term "the people" for purposes of applying the decision of the Supreme Court of the United States in N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 211 (2022). Compare Lane (Lane, ECF No. 38, pp. 19-33) with Coleman (Coleman, ECF No. 22, pp. 10-23).

Having considered the analyses of "the people" issue in both Lane and Coleman, the Court incorporates and adopts in this case, as an alternative to Lane's holding on "the people" issue and the analysis that ensues that holding in Lane, the decision of Coleman on "the people" issue and the analysis that ensues that decision in Coleman.

Accordingly, this MEMORANDUM ORDER shall serve as an amendment to the ORDER (ECF No. 23) entered in this case on September 13, 2023.

It is so ORDERED.

/s/

REP

Robert E. Payne
Senior United States District Judge

Richmond, Virginia
Date: December 8, 2023