

United States Court of Appeals for the Fifth Circuit

No. 24-50202
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 6, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MICHAEL THOMAS McCOWAN,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:23-CR-174-1

Before JONES, DUNCAN, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Michael Thomas McCowan pleaded guilty to possessing a firearm as a felon in violation of 18 U.S.C. § 922(g)(1), reserving the right to appeal the denial of his motion to dismiss the indictment, which argued that § 922(g)(1) violated the Second Amendment facially and as applied to him under the test

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

No. 24-50202

articulated in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). He reiterates his contentions under *Bruen* on appeal.

The Government has moved for summary affirmance or, in the alternative, for an extension of time to file an appellate brief. While McCowan takes no position on the Government’s motion for summary affirmance, he correctly concedes that his contentions are foreclosed by circuit precedent. We rejected a facial challenge to § 922(g)(1) under *Bruen* in *United States v. Diaz*, 116 F.4th 458, 471–72 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2822 (2025). We have also held that the statute may be constitutionally applied to defendants, like McCowan, still serving a sentence for a prior felony conviction at the time of the § 922(g)(1) offense. *See United States v. Giglio*, 126 F.4th 1039, 1044–45 (5th Cir. 2025); *see also United States v. Contreras*, 125 F.4th 725, 732–33 (5th Cir. 2025).

Accordingly, the Government’s unopposed motion for summary affirmance is GRANTED. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). The district court’s judgment is AFFIRMED, and the Government’s alternative motion for an extension of time to file a brief is DENIED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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October 06, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 24-50202 USA v. McCowan
USDC No. 7:23-CR-174-1

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Casey A. Sullivan, Deputy Clerk

Enclosure(s)

Ms. Laura Elena Durbin
Mr. Shannon Willis Locke
Mr. Zachary Carl Richter