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UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



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ORDER

July 10, 2026

Before

MICHAEL B. BRENNAN, *Chief Judge*
MICHAEL Y. SCUDDER, *Circuit Judge*
DORIS L. PRYOR, *Circuit Judge*

No. 25-1694	UNITED STATES OF AMERICA, Plaintiff - Appellee v. HERBERT GARY, Defendant - Appellant
Originating Case Information: District Court No: 1:21-cr-00253-1 Northern District of Illinois, Eastern Division District Judge Thomas M. Durkin	

The following are before the court: **MOTION FOR SUMMARY AFFIRMANCE**, filed on June 23, 2026, by counsel for the appellee,

The issues presented in the appellant's opening brief have been resolved, adversely to appellant, by *United States v. Prince*, 171 F.4th 1009 (7th Cir. 2026), and *United States v. Watson*, 171 F.4th 1012 (7th Cir. 2026). Accordingly,

IT IS ORDERED that the government's motion is **GRANTED**, and the district court's judgment is summarily **AFFIRMED**.

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF NextGen 1.7.1.1
Eastern Division**

UNITED STATES OF AMERICA

Plaintiff,

v.

Case No.: 1:21-cr-00253

Honorable Thomas M. Durkin

Herbert Gary

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, December 20, 2023:

MINUTE entry before the Honorable Thomas M. Durkin: as to Herbert Gary. Gary moves to withdraw his guilty plea and dismiss the indictment arguing that the felon in possession statute, 18 U.S.C. §922(g)(1), violates the Second Amendment. Many defendants around the country have made similar motions in the wake of the Supreme Court's decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), and in this district in particular, the Seventh Circuit's decision in *Atkinson v. Garland*, 70 F.4th 1018, 1019 (7th Cir. 2023). This Court recently denied a motion similar to Gary's. See *U.S. v. Johnson*, 2023 WL 6690388, at *1 (N.D. Ill. Oct. 12, 2023). Gary does not raise any arguments beyond those the Court addressed and rejected in the *Johnson* decision, so the Court adopts its findings from the *Johnson* decision here. The Court again finds that "the overarching reasons for the categorical disarmament laws of the past were to maintain social order and keep firearms out of the hands of groups who were considered dangerous, violent, or untrustworthy adherents to the rule of law," and that the same is true of 18 U.S.C. §922(g)(1) in the 21st Century. *Id.* at *7. Gary asserts that the Court should not consider whether his prior convictions are violent or non-violent. *R.* 68–1 at 11. The Court agrees and reiterates its finding from the *Johnson* decision that "history does not support an individualized assessment of 'violent' versus 'non-violent' in determining who should be disarmed, but rather, categorical bans based on membership to a 'dangerous' or 'untrustworthy' group. And practically, making individualized determinations of dangerousness would be highly subjective and nearly standardless." *Johnson*, 2023 WL 6690388, at *8. For these reasons, the government has met its burden to show that 18 U.S.C. §922(g)(1), on its face and as applied to Gary, is "consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 142 S. Ct. at 2126. Therefore, Gary's motion to withdraw his guilty plea and dismiss the indictment [68–1] is denied. Mailed notice. (ecw,)

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