

IN THE
SUPREME COURT OF THE UNITED STATES

Shawn Thomas Borne v. United States of America

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

ATTACHMENT A

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

October 2, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SHAWN THOMAS BORNE,

Defendant - Appellant.

No. 23-8008
(D.C. No. 1:22-CR-00083-SWS-1)
(D. Wyo.)

ORDER AND JUDGMENT*

Before **CARSON, BALDOCK, and EBEL**, Circuit Judges.**

A grand jury indicted Defendant on one count of possession of a firearm in violation of 18 U.S.C. § 922(g)(1). Defendant possessed a .380 pistol and a LAR-15 rifle. He has two prior felony convictions—one for attempted possession of a stolen vehicle under Nevada state law, arising from an incident involving a “bait moped” that would not start, and another for possession of methamphetamine under Wyoming state law.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

** After examining the briefs and appellate record, this panel previously determined unanimously to grant the government’s unopposed motion for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument.

Congress long ago prohibited felons—even non-violent felons—from possessing firearms. 18 U.S.C § 922(g)(1). Defendant moved to dismiss the indictment against him considering the Supreme Court’s recent decision in New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111 (2022), which created a new test for the scope of the right to possess firearms. Defendant brings both a facial and an as-applied challenge to the constitutionality of the ban.¹ The district court issued an oral ruling denying Defendant’s motion to dismiss. Defendant pleaded guilty but preserved his right to appeal the motion to dismiss. The district court sentenced Defendant to thirty-two months’ imprisonment and three years’ supervised release.

While Defendant’s appeal was pending, we decided Vincent v. Garland, 2023 WL 5988299 (10th Cir. Sept. 15, 2023), in which we held that the Supreme Court’s new test in Bruen does not expressly overrule our precedent from United States v. McCane, 573 F.3d 1037 (10th Cir. 2009), upholding the constitutionality of the ban. After we issued Vincent, Defendant filed an unopposed motion to expedite decision. In that motion, he acknowledges that Vincent forecloses Second Amendment challenges to § 922(g)(1). Defendant contends that an expedited decision will allow him to promptly petition for rehearing so that he may receive timely relief from his sentence if he succeeds. The government does not oppose the motion.

¹ Defendant also asserts that Congress exceeded its Commerce Clause authority in enacting the relevant portion of § 922(g)(1). Defendant recognizes that this claim is foreclosed and must fail but brings it anyway for preservation purposes only.

Exercising jurisdiction under 28 U.S.C. § 1291, we grant Defendant's motion to expedite decision and affirm the district court's decision upholding the constitutionality of 18 U.S.C. § 922(g)(1).

AFFIRMED.

Entered for the Court

Joel M. Carson III
Circuit Judge