

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

KRISTOPHER LEE ROCCO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

/s/ Adam Nicholson

JASON HAWKINS
Federal Public Defender
Northern District of Texas
TX State Bar No. 00759763
525 Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
(214) 767-2886 Fax

Adam Nicholson **
Assistant Federal Public Defender
Northern District of Texas
TX State Bar No. 24097045
525 S. Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
(214) 767-2886

INDEX TO APPENDICES

Appendix A Opinion of Fifth Circuit, CA No. 23-10138,
United States v. Rocco, 2024 WL 546342 (5th Cir. Feb. 12, 2024)
(unpublished).

Appendix B Judgment and Sentence of the United States District Court
for the Northern District of Texas, entered February 6, 2023.
United States v. Rocco, Dist. Court 4:22-CR-261-Y.

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

February 12, 2024

Lyle W. Cayce
Clerk

No. 23-10138

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

KRISTOPHER LEE ROCCO,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CR-261-1

Before ELROD, WILLETT, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

Federal law bars convicted felons from possessing firearms. *See* 18 U.S.C. § 922(g)(1). Kristopher Rocco, a convicted felon, pled guilty of violating § 922(g)(1) by possessing numerous firearms. He was sentenced to 33 months imprisonment.

On appeal, Rocco argues the district court erred in three ways by accepting his guilty plea. His arguments are all squarely foreclosed by our

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

No. 23-10138

precedent, however. First, Rocco contends there was an insufficient factual basis for his plea because § 922(g)(1)'s "in or affecting commerce" element, when "[c]orrectly interpreted," requires more than the mere past movement of his firearms in interstate commerce. But, as he acknowledges, our precedent holds otherwise. *See United States v. Rawls*, 85 F.3d 240, 242 (5th Cir. 1996).

Next, Rocco argues that § 922(g)(1) exceeds Congress's authority under the Commerce Clause and that the district court erred by failing to advise him of that fact. Rocco admits, however, that this challenge is also foreclosed by our precedent. *See United States v. Alcantar*, 733 F.3d 143, 145 (5th Cir. 2013).

Finally, Rocco contends that § 922(g)(1) violates the Second Amendment under *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), and that the district court erred by failing to inform him of its unconstitutionality. But, as he concedes, our review is for plain error. And, in a recently published opinion, we held that § 922(g)(1) is not clearly or obviously unconstitutional under *Bruen*. *See United States v. Jones*, 88 F.4th 571, 573–74 (5th Cir. 2023). Therefore, Rocco cannot demonstrate plain error.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 4:22-CR-261-Y(1)

Brandie L. Wade, assistant U.S. attorney

KRISTOPHER LEE ROCCO

Joshua S. Rhodes, attorney for the defendant

On September 14, 2022, the defendant, Kristopher Lee Rocco, entered a plea of guilty to count one of the one-count information. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:

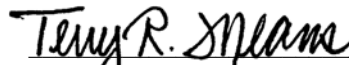
<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE CONCLUDED</u>	<u>COUNT</u>
18 U.S.C. §§ 922(g)(1) & 924(a)(2)	Felon in Possession of Firearm	April 14, 2021	1

The defendant is sentenced as provided in page two through three of this judgment. The sentence is imposed under Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission under Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 for count one of the one-count information.

The defendant shall notify the United States attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed February 2, 2023.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed February 6, 2023.

Judgment in a Criminal Case

Defendant: Kristopher Lee Rocco

Case Number: 4:22-CR-261-Y(1)

Judgment -- Page 2 of 3

IMPRISONMENT

The defendant, Kristopher Lee Rocco, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 33 months on count one of the one-count information. This sentence shall run concurrently with any future sentence that may be imposed in case no. 1706366D, Criminal District Court No. 2, Tarrant County, Texas.

The Court recommends that the defendant be incarcerated at a facility within the Northern District of Texas that provides mental-health and controlled-substance counseling and treatment, and that he be enrolled in the Institution Residential Drug Abuse Treatment Program, if eligible.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 2 p.m. on February 28, 2023, as notified by the United States marshal or as notified by the probation office.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 3 years on count one of the one-count information.

The defendant, while on supervised release, shall comply with the standard conditions recommended by the U. S. Sentencing Commission at §5D1.3(c) of the United States Sentencing Commission Guidelines Manual, and shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004;

report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Federal Bureau of Prisons;

refrain from any unlawful use of a controlled substance. The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court;

participate in an outpatient program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month; and

participate in outpatient mental-health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered (copayment) at a rate of at least \$25 per month.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration. Restitution is not ordered because there is no victim other than society at large.

FORFEITURE

Under 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), it is hereby ordered that defendant's interest in the following property be condemned and forfeited to the United States: a CBC, Model Rossi RS22, 22LR caliber rifle, bearing Serial No. 7CA123767M; a Ruger, Model 22/45 MK III Target, 22LR caliber pistol, bearing Serial No. 272-03949; a Sig Sauer, Model SP2022, 9-millimeter caliber pistol, bearing Serial No. 24B035117; and a Sig Sauer, Model P320, 9-millimeter caliber pistol, bearing Serial No. 58B011615.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States marshal

BY _____
deputy marshal