

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DEQUON REON STOVALL,

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. 23-10440,
United States v. Stovall, 2024 WL 572345 (5th Cir. Feb. 7, 2024)
(unpublished).

Appendix B Judgment and Sentence of the United States District Court
for the Northern District of Texas, entered April 21, 2023.
United States v. Stovall, Dist. Court 2:22-CR-082-Z-BR.

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 23-10440

United States Court of Appeals
Fifth Circuit

FILED

February 7, 2024

Lyle W. Cayce
Clerk

Plaintiff—Appellee,

UNITED STATES OF AMERICA,

versus

DEQUON REON STOVALL,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:22-CR-82-1

Before STEWART, CLEMENT, and HO, *Circuit Judges.*

PER CURIAM:*

Dequon Stovall appeals his conviction for possession of ammunition by a convicted felon, arguing that the statute prohibiting such possession, 18 U.S.C. § 922(g)(1), is unconstitutional. We affirm the conviction.

In November 2022, Stovall pleaded guilty to the charge of possession of ammunition by a convicted felon. *See* 18 U.S.C. § 922(g)(1) (“It shall be unlawful for any person . . . who has been convicted in any court of[] a crime

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

No. 23-10440

punishable by imprisonment for a term exceeding one year . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”). In his plea agreement, Stovall waived his right to “appeal the conviction” and to “contest the conviction . . . in any collateral proceeding,” but he reserved his right to challenge his conviction or sentence in certain limited contexts, including with respect to “the voluntariness of [his] plea of guilty or this waiver.” The district court accepted Stovall’s guilty plea and sentenced him to sixty months in prison and one year of supervised release.

Stovall appealed. On appeal, he makes three main arguments. First, he argues that the appeal waiver in his plea agreement does not prevent him from challenging the constitutionality of his conviction. Second, he argues that § 922(g)(1) is unconstitutional because, as its text has been interpreted by the Supreme Court, it exceeds Congress’s power under the Commerce Clause. Third, he argues that § 922(g)(1) violates the Second Amendment under the Supreme Court’s recent decision in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

Stovall concedes that he did not preserve his constitutional challenges at the district court. We therefore review for plain error. *United States v. Howard*, 766 F.3d 414, 419 (5th Cir. 2014). On plain-error review, “the legal error must be clear or obvious, rather than subject to reasonable dispute.” *Puckett v. United States*, 556 U.S. 129, 135 (2009).

The parties dispute whether Stovall may appeal his conviction despite having agreed to the appeal waiver. We need not resolve this issue, however, because Stovall’s arguments fail on the merits. *United States v. Graves*, 908 F.3d 137, 140 (5th Cir. 2018). First, as Stovall concedes, circuit precedent

No. 23-10440

forecloses his Commerce Clause challenge to § 922(g)(1). *See United States v. Jones*, 88 F.4th 571, 573 (5th Cir. 2023).¹

Stovall’s Second Amendment challenge is likewise foreclosed. While “[t]his court has not yet addressed the impact of *Bruen* on the constitutionality of § 922(g)(1) in a case in which the issue was preserved in the district court,” *id.*, this court recently concluded that such a challenge cannot succeed on plain-error review, *see id.* at 573–74. “Arguments that require the extension of existing precedent cannot meet the plain error standard.” *Id.* at 574. Nor can arguments for which “this circuit’s law remains unsettled and the other federal circuits have reached divergent conclusions.” *Id.* (internal quotation omitted). Because *Bruen*’s effect on § 922(g)(1) is yet unclear, *see id.* at 573–74, Stovall cannot establish that his conviction amounts to plain error. We therefore affirm his conviction.

¹ Stovall also advances a statutory argument that, properly interpreted, the text of § 922(g)(1) requires more than a minimal nexus with interstate commerce. However, he acknowledges that this argument is foreclosed as well. *See Scarborough v. United States*, 431 U.S. 563, 575–77 (1977); *United States v. Rawls*, 85 F.3d 240, 242 (5th Cir. 1996).

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Amarillo Division

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
APR 21 2023
CLERK, U.S. DISTRICT COURT
By: *AC* Deputy

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 2:22-CR-082-Z-BR-(1)
U.S. Marshal's No.: 15840-510
Meredith Elizabeth Pinkham, Assistant U.S. Attorney
Cristy J McElroy, Attorney for the Defendant

DEQUON REON STOVALL

On November 7, 2022 the defendant, DEQUON REON STOVALL, entered a plea of guilty as to Count Four of the Indictment filed on July 28, 2022. 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 Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	CONVICTED FELON IN POSSESSION OF AMMUNITION	06/21/2022	Four

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count Four of the Indictment filed on July 28, 2022.

Upon Motion of the government, all remaining Counts are dismissed, as to this defendant only.

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 April 19, 2023.



MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE

Signed April 21, 2023.

Judgment in a Criminal Case
Defendant: DEQUON REON STOVALL
Case Number: 2:22-CR-00082-Z-BR(1)

Page 2 of 5

IMPRISONMENT

The defendant, DEQUON REON STOVALL, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Sixty (60) months as to Count Four** of the Indictment filed on July 28, 2022.

The Court makes the following recommendations to the Bureau of Prisons:

1. that the Defendant be allowed to participate in a medical diagnostic review and evaluation to address the vision and dental issues reflected in the PSR, be allowed to participate in mental health treatment to include counseling; and be allowed to participate in any and all substance abuse treatment and rehabilitation programs, including the Residential Drug Abuse Program, while in the custody of the Federal Bureau of Prisons, if eligible, if consistent with security classification;
2. that the Defendant be allowed to pursue any and all educational and vocational training, if possible, courses to obtain CDL, if eligible, if consistent with security classification; and
3. that the Defendant be allowed to serve his term of incarceration at a facility nearest Amarillo, Texas, if possible, if eligible, if consistent with security classification.

The Defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **One (1) year** as to Count Four of the Indictment filed on July 28, 2022.

While on supervised release, in compliance with the Standard Conditions of supervision adopted by the United States Sentencing Commission at Section 5D1.3(c), the defendant shall:

1. The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.
3. The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.
4. The defendant shall answer truthfully the questions asked by the probation officer.

Judgment in a Criminal Case

Defendant: DEQUON REON STOVALL

Case Number: 2:22-CR-00082-Z-BR(1)

5. The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observes in plain view.
7. The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or the job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.
10. The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
13. The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

Also, as set forth in the Notice of Intent to Impose Conditions of Supervised Release signed and dated April 19, 2023, the Defendant shall comply with the below-listed other conditions of supervised release, which are derived from Sections 5D1.3(a), (b), (d), and (e), in relevant part:

1. The defendant shall not commit another federal, state or local offense (*see* 18 U.S.C. § 3583(d)).
2. The defendant shall not unlawfully possess a controlled substance (*see* 18 U.S.C. § 3583(d)).

Judgment in a Criminal Case
Defendant: DEQUON REON STOVALL
Case Number: 2:22-CR-00082-Z-BR(1)

Page 4 of 5

3. The defendant who is convicted for a domestic violence crime as defined in 18 U.S.C. § 3561(b) for the first time shall attend a public, private, or private non-profit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is available within a 50-mile radius of the legal residence of the defendant (*see* 18 U.S.C. § 3583(d)).
4. The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on supervised release and at least two periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court for any individual defendant if the defendant's presentence report or other reliable information indicates a low risk of future substance abuse by the defendant (*see* 18 U.S.C. § 3583(d)).
5. If a fine is imposed and has not been paid upon release to supervised release, the defendant shall adhere to an installment schedule to pay that fine (*see* 18 U.S.C. § 3624(e)).
6. The defendant shall (A) make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A, or any other statute authorizing a sentence of restitution; and (B) pay the assessment imposed in accordance with 18 U.S.C. § 3013. If there is a court-established payment schedule for making restitution or paying the assessment (*see* 18 U.S.C. § 3572(d)), the defendant shall adhere to the schedule.
7. If the defendant is required to register under the Sex Offender Registration and Notification Act, the defendant shall comply with the requirements of that Act (*see* 18 U.S.C. § 3583(d)).
8. The defendant shall submit to the collection of a DNA sample from the defendant at the direction of the United States Probation Office if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (34 U.S.C. § 40702).
9. The defendant shall participate in outpatient mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$25 per month.
10. The defendant shall participate in an outpatient program approved by the probation officer for treatment of narcotic, 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, and contributing to the costs of services rendered (copayment) at the 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.

Judgment in a Criminal Case
Defendant: DEQUON REON STOVALL
Case Number: 2:22-CR-00082-Z-BR(1)

FORFEITURE

Pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), and subject to the provisions of 21 U.S.C. § 853(n), it is hereby ordered that Defendant's interest in the following property is condemned and forfeited to the United States: **52 rounds of Wolf 7.26x39 caliber ammunition; 20 rounds of Magtech .45 ACP caliber ammunition; and 30 rounds of Remington, Model R-P, .38 Special caliber ammunition.**

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