

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

TAYRON DESHAWN THOMAS,

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/ Christy Posnett Martin

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Appendix A Opinion of Fifth Circuit, CA No. 23-10859, *United States v. Thomas*, 2024 WL 980495 (5th Cir. Mar. 7, 2024)(unpublished).

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered July 26, 2023.
United States v. Thomas, Dist. Court 5:22-CR-065-H-BQ-1..

Appendix C Factual Resume in Support of Plea

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 23-10859
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 7, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

TAYRON DESHAWN THOMAS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:22-CR-65-1

Before JONES, SOUTHWICK, and HO, *Circuit Judges.*

PER CURIAM:*

Tayron Deshawn Thomas appeals his conviction of possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1). Thomas contends for the first time on appeal that § 922(g)(1) violates the Second Amendment in light of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022), and exceeds Congress’s authority under the Commerce Clause.

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

No. 23-10859

Thomas concedes that this court’s review is for plain error. To demonstrate plain error, Thomas must show a clear or obvious error that affected his substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009).

The Government has filed an unopposed motion for summary affirmance or, in the alternative, for an extension of time to file its brief. As the Government contends, Thomas’s argument that the district court plainly erred because § 922(g)(1) is unconstitutional is foreclosed by *United States v. Jones*, 88 F.4th 571, 573-74 (5th Cir. 2023). In *Jones*, we held that any error was not clear or obvious because there was no binding precedent holding that § 922(g)(1) was unconstitutional and it was unclear that *Bruen* dictated such a result. *Id.* Moreover, Thomas correctly concedes that his Commerce Clause challenge to § 922(g)(1) is foreclosed by *United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013).

Where “there can be no substantial question as to the outcome of the case,” summary disposition is appropriate. *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, the motion for summary affirmance is GRANTED, the alternative motion for an extension of time is DENIED, and the district court’s judgment is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS LUBBOCK DIVISION

UNITED STATES OF AMERICA

v.

TAYRON DESHAWN THOMAS

§ **JUDGMENT IN A CRIMINAL CASE**
 §
 §
 § Case Number: **5:22-CR-00065-H-BQ(1)**
 § USM Number: **17363-510**
 § **David E. Sloan**
 § Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	1 of the superseding information filed February 3, 2023.
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(8) - CONVICTED FELON IN POSSESSION OF A FIREARM	07/19/2022	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s)
- Remaining count(s) are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 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. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

July 26, 2023

Date of Imposition of Judgment



Signature of Judge

James Wesley Hendrix
United States District Judge

Name and Title of Judge

July 26, 2023

Date

DEFENDANT: TAYRON DESHAWN THOMAS
CASE NUMBER: 5:22-CR-00065-H-BQ(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

96 months as to count 1. This sentence shall run consecutively to any sentence imposed in Case No. CC-2022-CR-2143, pending in Lubbock County, Texas; and shall run concurrently with any sentences imposed in Case Nos. PFF-2022-MAG-2553, PFF-2022-MAG-2554, PFF-2022-MAG-2555, PFF-2022-MAG-2556, and PFF-2022-MAG-2557, all pending in Lubbock County, Texas.

The court makes the following recommendations to the Bureau of Prisons: Incarceration at FMC Fort Worth, Texas.

The Court recommends that, while incarcerated, the defendant receive appropriate substance-abuse and mental-health treatment, but the Court did not lengthen the defendant's prison term to promote rehabilitation. *See Tapia v. United States*, 564 U.S. 319 (2011).

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

The defendant shall surrender to the United States Marshal for this district:

at a.m. p.m. on

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

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 UNITED STATES MARSHAL

DEFENDANT: TAYRON DESHAWN THOMAS
CASE NUMBER: 5:22-CR-00065-H-BQ(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **Three (3) years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You 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.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: TAYRON DESHAWN THOMAS
CASE NUMBER: 5:22-CR-00065-H-BQ(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must 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, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must 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, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must 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. You must 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 you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.txnp.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: TAYRON DESHAWN THOMAS
CASE NUMBER: 5:22-CR-00065-H-BQ(1)

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant must not communicate, or otherwise, interact, with the victim associated with this case, either directly or through someone else, without first obtaining the permission of the probation officer.
2. The defendant must participate in a cognitive-behavioral treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). Such programs may include group sessions led by a counselor or participation in a program administered by the probation office.
3. 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 \$20.00 per month.

DEFENDANT: TAYRON DESHAWN THOMAS
 CASE NUMBER: 5:22-CR-00065-H-BQ(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00

- The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- Restitution amount ordered pursuant to plea agreement \$
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - the interest requirement is waived for the fine restitution
 - the interest requirement for the fine restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

APPENDIX C

CLERK U.S. DISTRICT COURT
NORTHERN DIST. OF TX
LUBBOCK DIVISION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

2023 FEB -3 AM 9: 58
DEPUTY CLERK BJS

UNITED STATES OF AMERICA

v.

TAYRON DESHAWN THOMAS

NO. 5:22-CR-065-H

FACTUAL RESUME

In support of Tayron Deshawn Thomas’s plea of guilty to the offense in Count One of the Superseding Information, Thomas, the defendant, David Sloan, the defendant’s attorney, and the United States of America (the government) stipulate and agree to the following:

ELEMENTS OF THE OFFENSE

To prove the offense alleged in Count One of the Superseding Information, charging a violation of 18 U.S.C. §§ 922(g)(1), 924(a)(8), that is, Convicted Felon in Possession of a Firearm, the government must prove each of the following elements beyond a reasonable doubt:¹

- First.* That the defendant knowingly possessed a firearm as charged;
- Second.* That before the defendant possessed the firearm, the defendant had been convicted in a court of a crime punishable by imprisonment for a term in excess of one year;
- Third.* That the defendant knew he had been convicted in a court of a crime punishable by a term of imprisonment in excess of one year; and

¹ Fifth Circuit Pattern Jury Instruction 2.43D (5th Cir. 2019); *see also Wooden v. United States*, 142 S. Ct. 1063 (2022).

Fourth. That the firearm possessed traveled in interstate commerce; that is, before the defendant possessed the firearm, it had traveled at some time from one state to another or between any part of the United States and any other country.

STIPULATED FACTS

1. Tayron Deshawn Thomas admits and agrees that on or about July 19, 2022, in the Lubbock Division of the Northern District of Texas, and elsewhere, knowing he had previously been convicted of a crime punishable by a term of imprisonment exceeding one year, he did knowingly possess, in or affecting interstate or foreign commerce, a firearm, to wit: an Astra, Model Constable II, .380 caliber semi-automatic handgun, serial number F4304. In violation of Title 18, United States Code, Sections 922(g)(1), 924(a)(8).

2. On July 19, 2022, investigators assigned to the Lubbock Texas Anti-Gang Center (TAG) received information about an armed robbery at the Diamond game room located at 1511 East Farm to Market Road 1585, Lubbock, Texas. The robbery occurred at approximately 3:54 p.m. Lubbock County Sheriff's Office deputies arrived at the game room and reviewed surveillance footage from the robbery. The suspect was wearing a white t-shirt and blue shorts and arrived in a gold Chevrolet sedan with Texas license plate K LH9072. The suspect was seen on surveillance cameras displaying a firearm and demanding money from the safe behind the desk. The game room employee unlocked the safe and handed the suspect what the employee believed was approximately \$3,000. The suspect walked to the front door and demanded that the employee unlock the door and then fired one round in the employee's direction. A projectile impact mark

was found on the desk where the employee was standing. A .380 caliber shell casing was recovered from the scene.

3. Investigators were able to identify Tayron Deshawn Thomas as the suspect in the robbery. Investigators identified and contacted the owner of the vehicle that Thomas was driving. The owner of the vehicle told law enforcement that Thomas borrowed the vehicle at approximately 1:00 p.m. The owner of the vehicle also told law enforcement where Thomas could be found.

4. TAG investigators established surveillance at an apartment complex located at 5434 40th Street, Lubbock, Texas. Shortly thereafter, investigators saw Thomas's girlfriend drive a silver Mercedes vehicle into the apartment parking lot and enter an apartment. Thomas's girlfriend, Thomas, and two juveniles exited the vehicle and went inside the apartment unit. All four passengers then left the apartment, entered the vehicle, and left the parking lot. Investigators followed the vehicle and initiated a traffic stop.

5. All occupants were removed from the vehicle and Thomas threw a plastic baggie containing suspected crack cocaine when he exited the vehicle. Thomas was wearing a white t-shirt and blue shorts that matched the clothing from the surveillance footage at the game room. Thomas immediately said that there was a firearm in the passenger seat. Investigators located the firearm where Thomas had been sitting. The firearm was an Astra, Model Constable II, .380 caliber semiautomatic pistol, bearing serial number F4304, loaded with six rounds in the magazine. A TAG officer read Thomas his *Miranda* warnings and Thomas agreed to speak to officers at the scene.

Thomas confirmed that he fired a round inside the game room and that the firearm in the vehicle was the one that he used in the robbery. Law enforcement recovered \$1,750 in cash from Thomas's pockets.

6. A review of Thomas's criminal history showed that he has four prior felony convictions for Possession of a Controlled Substance with Intent to Deliver. Thomas was sentenced to five years confinement for three of these convictions, and 18 months confinement for the fourth conviction. As such, Thomas knew he had been convicted of an offense punishable by a term of more than one year.

7. A special agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives confirmed that Astra firearms are manufactured in Spain. As such, the firearm affected interstate or foreign commerce; that is, before Thomas possessed the firearm, it had traveled at some time from one state to another or between any part of the United States and any other country.

8. Thomas admits and agrees that he committed all the essential elements of the offense alleged in Count One of the Superseding Information. Specifically, Thomas admits that on July 19, 2022, he knowingly possessed the firearm described above while being a person having been previously convicted in a court of a crime punishable by imprisonment for a term in excess of one year. Thomas admits that he knew he had been previously convicted of a crime punishable by a term of imprisonment exceeding one year. Thomas admits that the said firearm traveled in or affected interstate or foreign commerce.

9. The defendant agrees that he committed all the essential elements of the offense. This factual resume is not intended to be a complete accounting of all the facts and events related to the offense charged in this case. The limited purpose of this statement of facts is to demonstrate that a factual basis exists to support the defendant's guilty plea to Count One of the Superseding Information.

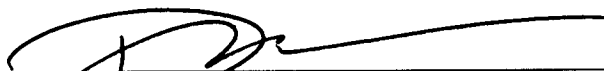
10. The defendant further admits and agrees that the above-described firearm was involved or used in the defendant's knowing commission of this offense and is therefore subject to forfeiture, pursuant to 18 U.S.C. § 924(d).

AGREED TO AND STIPULATED on this 2nd day of February, 2023.


TAYRON DESHAWN THOMAS
Defendant

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