

United States Court of Appeals for the Fifth Circuit

No. 23-30872
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
November 7, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CARLSEL ALEXANDER,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:23-CR-90-1

Before DENNIS, HO, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

Defendant Carlsel Alexander pleaded guilty, without a plea agreement, to possession of a firearm after a felony conviction in violation of 18 U.S.C. § 922(g)(1). Over Alexander's objection, the district court imposed a within-guidelines sentence of thirty-three months of imprisonment. Alexander timely filed a notice of appeal.

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

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At the district court and on appeal, Alexander contests the district court's application of United States Sentencing Guidelines § 2K2.1(a)(4)(B), which provides for a base offense level of twenty when the offense involves a semiautomatic firearm capable of accepting a large capacity magazine. Alexander argues that the definition of a "large capacity magazine" provided in the commentary to § 2K2.1 should not be entitled to deference. *See* § 2K2.1, cmt. n.2. He further asserts that the commentary violates the principle of separation of powers. In addition to his challenge to the district court's application of § 2K2.1(a)(4)(B), Alexander also asserts, for the first time on appeal, that § 922(g)(1) is unconstitutional in light of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022).

This court reviews a district court's interpretation of the Sentencing Guidelines de novo, *United States v. Vargas*, 74 F.4th 673, 679 (5th Cir. 2023) (en banc), *cert. denied*, 144 S. Ct. 828 (2024), and reviews unpreserved challenges for plain error. *Puckett v. United States*, 556 U.S. 129, 135 (2009); *United States v. Soza*, 874 F.3d 884, 896–97 (5th Cir. 2017).

Our court recently addressed Alexander's first challenge about whether it is proper to accept the Sentencing Guidelines' commentary defining "large capacity magazine" in *United States v. Martin*, 119 F.4th 110 (5th Cir. 2024). We found that reliance on the commentary was not error because "adhering to the commentary does not cause one to 'violat[e] the dictates' of the Guidelines' prohibition against large capacity magazines." *Id.* at 414–15 (citing *Stinson v. United States*, 508 U.S. 36, 42 (1993)). Second, with respect to Alexander's argument that § 922(g)(1) facially violates the Second Amendment, our precedent forecloses his facial challenge to the constitutionality of § 922(g)(1). *United States v. Diaz*, 116 F.4th 458, 471 (5th Cir. 2024) (holding that § 922(g)(1) is constitutional in at least one application); *see also United States v. Jones*, 88 F.4th 571, 573–74 (5th Cir.

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2023), *cert. denied*, 144 S. Ct. 1081 (2024). Because both of Alexander's challenges are foreclosed, we AFFIRM.