

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-10142

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THELONIOUS WAYNE KIRBY,

Defendant- Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:22-cr-00026-TJC-LLL-1

Before NEWSOM, ABUDU, and MARCUS, Circuit Judges.

PER CURIAM:

Thelonious Kirby appeals his conviction for being a convicted felon in possession of a firearm. He argues that 18 U.S.C. § 922(g)(1) violates the Second Amendment and the Commerce Clause. The government has moved for summary affirmance, arguing that, under our binding precedent, § 922(g)(1) is constitutional. After thorough review, we grant the government’s motion for summary affirmance.

We review a statute’s constitutionality *de novo*. *United States v. Rozier*, 598 F.3d 768, 770 (11th Cir. 2010). Summary disposition is appropriate if “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).¹ Under our prior panel precedent rule, we are bound by our prior published decisions that have not been overruled by the Supreme Court or ourselves sitting *en banc*. *United States v. Romo-Villalobos*, 674 F.3d 1246, 1251 (11th Cir. 2012).

The Second Amendment to the United States Constitution provides that: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms,

¹ In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), we adopted as binding precedent all Fifth Circuit decisions issued before October 1, 1981.

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shall not be infringed.” U.S. Const. amend. II. Under federal law, a person who has been convicted of a crime punishable by more than one year’s imprisonment may not possess a firearm or ammunition that has moved through interstate or foreign commerce. 18 U.S.C. § 922(g)(1). We have held that § 922(g)(1)’s prohibition on felon disarmament does not violate the Second Amendment and that § 922(g)(1) is a valid use of the congressional Commerce Clause power. *United States v. McAllister*, 77 F.3d 387, 389–90 (11th Cir. 1996); *Rozier*, 598 F.3d at 770–71.

Kirby’s argument -- that 18 U.S.C. § 922(g)(1) violates the Second Amendment and the Commerce Clause -- is foreclosed by our binding precedents. *See McAllister*, 77 F.3d at 389–90; *Rozier*, 598 F.3d at 770–71. Moreover, we recently held that *Rozier* was not abrogated by the Supreme Court’s decision in *N.Y. State Rifle and Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). *See United States v. Du-bois*, 94 F.4th 1284, 1293 (11th Cir. 2024). And we are bound by all of our prior published decisions because they have not been overruled by the Supreme Court or ourselves sitting *en banc*. *Romo-Villalobos*, 674 F.3d at 1251. Accordingly, we grant the government’s motion for summary disposition, since it is “clearly right as a matter of law” that § 922(g)(1) is constitutional. *See Groendyke Transp.*, 406 F.2d at 1162.

AFFIRMED.