United States Court of Appeals
Fifth Circuit

F I L E D

August 21, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-51280
Conference Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

BRENT BATTIN

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:05-CR-609-ALL

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:[*]

Brent Battin appeals following his conviction for possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). He argues that his prior Texas state conviction for felony evading arrest was not a qualifying predicate offense punishable by imprisonment for a term exceeding one year. Although he acknowledges that the offense was a state jail felony, he argues that his plea agreement provided that he would be sentenced in accordance with TEX.

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[*] Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

PENAL CODE ANN. § 12.44(a), which allows punishment as if the crime were a Class A misdemeanor subject to a maximum one-year sentence. We have previously rejected a nearly identical argument. *United States v. Rivera-Perez*, 322 F.3d 350, 351-52 (5th Cir. 2003). Battin correctly concedes that his argument is foreclosed, and he states that he raises the issue to preserve it for possible further review.

Battin also argues that § 922(g)(1) is unconstitutional because the statute does not require a "substantial" effect on interstate commerce and it exceeds Congress' authority under the Commerce Clause. Battin's challenge to the constitutionality of § 922(g)(1) is also foreclosed by circuit precedent. *See United States v. Daugherty*, 264 F.3d 513, 518 (5th Cir. 2001); *United States v. Rawls*, 85 F.3d 240, 242 (5th Cir. 1996). Battin concedes as much and indicates that he raises this issue also to preserve it for further review.

AFFIRMED.