

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

February 20, 2008

No. 07-10296
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

KERMIT H POWDRILL, II

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:06-CR-43-ALL

Before KING, WIENER, and ELROD, Circuit Judges.

PER CURIAM:*

Kermit H. Powdrill, II, appeals his guilty plea conviction and sentence for possession with the intent to distribute marijuana, possession of a firearm in furtherance of a drug-trafficking crime, two counts of being a felon in possession of a firearm, and receipt of a firearm while under felony indictment. Powdrill argues that the district court abused its discretion in denying his motion for leave to file an out-of-time pretrial motion challenging his indictment. Powdrill sought to present arguments that are foreclosed under the law of this circuit.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The district court did not abuse its discretion in denying Powdrill's motion. See *United States v. Knezek*, 964 F.2d 394, 397 (5th Cir. 1992).

Powdrill also argues that 18 U.S.C. § 922(g)(1) is unconstitutional because the statute does not require a substantial effect on interstate commerce and it exceeds Congressional authority under the Commerce Clause. Powdrill's challenge to the constitutionality of § 922(g)(1) is foreclosed by circuit precedent. See *United States v. Daugherty*, 264 F.3d 513, 518 (5th Cir. 2001). Powdrill concedes as much but raises the issue to preserve it for further review.

Accordingly, the judgment of the district court is AFFIRMED.