

February 18, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-20777
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THOMAS JACKSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-03-CR-33

Before HIGGINBOTHAM, EMILIO M. GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

Thomas Jackson appeals his guilty plea conviction for being a felon in possession of a firearm. Jackson argues that his prosecution under 18 U.S.C. § 922(g) violated both the Commerce Clause and the Tenth Amendment because there was no evidence showing that the firearm was in or substantially affected interstate commerce. Jackson concedes that various panels of this court have rejected his argument. See, e.g., United States

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

v. Daugherty, 264 F.3d 513, 518 (5th Cir. 2001). He raises the issue only to preserve it for Supreme Court review.

A panel of this court cannot overrule a prior panel's decision in the absence of an intervening contrary or superseding decision by this court sitting en banc or by the United States Supreme Court. Burge v. Parish of St. Tammany, 187 F.3d 452, 466 (5th Cir. 1999). No such decision exists. Accordingly, Jackson's argument is indeed foreclosed. The judgment of the district court is AFFIRMED.

The Government has moved for a summary affirmance in lieu of filing an appellee's brief. In its motion, the Government asks that an appellee's brief not be required. The motion is GRANTED.

AFFIRMED; MOTION GRANTED.