

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 12-11233
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 26, 2014

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DAVID EUGENE THURSBY,

Defendant-Appellant

Appeals from the United States District Court
for the Northern District of Texas
USDC No. 3:12-CR-7-1

Before JOLLY, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

David Eugene Thursby appeals his conviction for being a felon in possession of a firearm. *See* 18 U.S.C. §§ 922(g)(1), 924(e). Relying on *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012) (*National Federation*), Thursby contends that § 922(g)(1) exceeds Congress's power under the Commerce Clause. He argues that § 922(g)(1) is unconstitutional as applied because his factual resume did not state that his

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 12-11233

possession of the firearm was an economic activity and failed to reflect that he was engaged in the relevant market at the time of the regulated conduct. Further, he contends that § 922(g)(1) is facially unconstitutional because *National Federation* interpreted the Commerce Clause to mandate that “Congress may regulate only ongoing economic activity,” and his possession of a firearm purchased many years ago does not qualify.

In *United States v. Wallace*, 889 F.2d 580, 583 (5th Cir. 1989), and decisions following, this court held that § 922(g)(1) was a valid exercise of Congress’s authority under the Commerce Clause. See *United States v. Alcantar*, 733 F.3d 143, 145 (5th Cir. 2013). *National Federation* did not overrule this court’s precedent upholding § 922(g)(1). *Alcantar*, 733 F.3d at 146. Whether this court’s review is de novo or for plain error, Thursby’s challenge to the constitutionality of § 922(g)(1) is foreclosed. See *Alcantar*, 733 F.3d at 146 & n.4.

AFFIRMED.