FILED
United States Court of Appeals
Tenth Circuit

October 5, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EMANUEL E. GOINES, JR.,

Defendant - Appellant.

No. 20-3183
(D.C. No. 6:19-CR-10103-JWB-1)
(D. Kan.)

ORDER AND JUDGMENT*

Before **BACHARACH**, **SEYMOUR**, and **PHILLIPS**, Circuit Judges.

Emanuel Goines presents two issues on appeal: Is 18 U.S.C. 922(g)(1)'s prohibition on a felon's possession of a firearm unconstitutional? And, does prosecution under 18 U.S.C. § 922(g)(1) require the government to prove that the accused's possession of the firearm contemporaneously affected commerce?

Both questions have been answered in the negative by the Supreme Court's decision in *Scarborough v. United States*, 431 U.S. 563 (1977) and precedents of this

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

court. *See, e.g.*, *United States v. Campbell*, 603 F.3d 1218, 1220 n.1 (10th Cir. 2010); *United States v. Urbano,* 563 F.3d 1150, 1154 (10th Cir. 2009); *United States v. Patton*, 451 F.3d 615, 634–35 (10th Cir. 2006); *United States v. Dorris*, 236 F.3d 582, 584 (10th Cir. 2000).

Goines's appeal invites us to reexamine *Scarborough* and our precedents interpreting it based on the Supreme Court's decisions in *United States v. Lopez*, 514 U.S. 549 (1995), *United States v. Morrison*, 529 U.S. 598 (2000), and *Gonzalez v. Raich*, 545 U.S. 1 (2005). Among other reasons for a reexamination, Goines points to Justice Thomas's dissent from the denial of certiorari in *Alderman v. United States*, 562 U.S. 1163, 131 S. Ct. 700 (2011). In that dissent, Justice Thomas, joined by Justice Scalia, stated that "*Scarborough*, as the lower courts have read it, cannot be reconciled with *Lopez*[,]" and that "[i]f the *Lopez* framework is to have any ongoing vitality, it is up to this Court to prevent it from being undermined by a 1977 precedent that does not squarely address the constitutional issue." 131 S. Ct. at 702–03.

But several layers of precedent foreclose us from accepting Goines's invitation. "Absent the Supreme Court overturning its own precedent or our own, we are bound by it." *Contreras ex rel. A.L. v. Doña Ana Cnty. Bd. of Cnty. Comm'rs*, 965 F.3d 1114, 1130 n.3 (10th Cir. 2020). This proposition becomes no less binding on our decisions if the reasoning of a prior Supreme Court decision is undermined by a subsequent decision. And the same holds true if two Justices express their personal views about a case in a dissent from the denial of certiorari. *See Schell v. Chief Just.*

and Justs. of Okla. Sup. Ct., --- F.4th ----, 2021 WL 3877404, at *1 (10th Cir. Aug. 25, 2021). As for our own precedents, absent an en banc decision from our circuit, three-judge panels are bound by previous panel decisions. *United States v. Manzanares*, 956 F.3d 1220, 1225 (10th Cir. 2020). Goines's en banc petition was denied on March 23, 2021. So, here, our only task is to determine whether the district court's decision was consistent with on-point Supreme Court and Tenth Circuit precedent. We find that it was and, exercising jurisdiction under 28 U.S.C. § 1291 and reviewing de novo, uphold the decision below.

Affirmed.

Entered for the Court

Gregory A. Phillips
Circuit Judge