

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 00-3127

September Term, 2001

Filed On: November 21, 2001 [640114]

United States of America,
Appellee

v.

Evelio A. Rivera,
Appellant

Appeal from the United States District Court
for the District of Columbia

Before: EDWARDS and TATEL, *Circuit Judges*, and SILBERMAN, *Senior Circuit Judge*

J U D G M E N T

This cause was considered on the record from the United States District Court for the District of Columbia, and was briefed by counsel. While the issues presented occasion no need for a published opinion, they have been accorded full consideration by the Court. See D.C. CIR. R. 36(b). It is

ORDERED and **ADJUDGED** that the judgment of the District Court is hereby affirmed. The appellant, Evelio A. Rivera, challenges the constitutionality of 18 U.S.C. § 922(g)(9) on two grounds. Because the controlling precedent of *Fraternal Order of Police v. United States*, 173 F.3d 898 (D.C. Cir. 1999), rejected a commerce clause challenge to § 922(g)(9) and no intervening D.C. Circuit or Supreme Court case has altered the analysis, his first challenge fails. See, e.g., *United States v. Santiago*, 238 F.3d 213, 216 (2d Cir. 2001). His second challenge, that § 922(g)(9) violates the constitution's prohibition of ex post facto punishment, also fails because he does not show either that the law applied to events occurring before its enactment, see, e.g., *United States v. Mitchell*, 209 F.3d 319, 322 (4th Cir. 2000), or that it increased the punishment for prior conduct, see, e.g., *Wiley v. Bowen*, 824 F.2d 1120, 1122 (D.C. Cir. 1987); *De Veau v. Braisted*, 363 U.S. 144, 160 (1960). Because Rivera's challenge falls short on both grounds, this court affirms the District Court's denial of his motion

to dismiss his indictment. It is

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FURTHER ORDERED that the Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for rehearing *en banc*. See D.C. CIR. R. 36(b).

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY:

Michael C. McGrail
Deputy Clerk