

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-2496

United States of America,

Appellee,

v.

Jonathan Lakeith Moore,

Appellant.

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* Appeal from the United States
* District Court for the
* Eastern District of Arkansas.
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* [UNPUBLISHED]
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Submitted: June 7, 2005
Filed: June 15, 2005

Before MELLOY, McMILLIAN, and GRUENDER, Circuit Judges.

PER CURIAM.

After the government charged Jonathan Moore with knowingly making a false written statement intended or likely to deceive a licensed firearms dealer, in violation of 18 U.S.C. § 922(a)(6), Moore filed a motion to dismiss the indictment. The district court¹ overruled the motion, and Moore later pleaded guilty and was sentenced to 5 years probation and 6 months home detention. On appeal, Moore argues that the indictment failed to state a crime and that the statute as applied was unconstitutionally vague because Moore reasonably could have believed he was answering truthfully

¹The Honorable George Howard, Jr., United States District Judge for the Eastern District of Arkansas.

when he listed himself as the actual buyer on the ATF form at issue. Moore also argues that an obstruction-of-justice sentencing enhancement was improperly applied. Lastly, Moore's counsel filed a portion of his appellate brief pursuant to Anders v. California, 386 U.S. 738 (1967), asking this Court to review the record to determine whether there exist any nonfrivolous issues under Blakely v. Washington, 124 S.Ct. 2531 (2004), which would benefit Moore, and if so, to grant him leave to withdraw from pursuing the appeal on all issues relating to Blakely.

Moore's challenge to the statute and his indictment is foreclosed by our recent decision in United States v. Blake, 394 F.3d 1089, 1090-91 (8th Cir. 2005) (affirming denial of defendant's motion to dismiss indictment charging him under § 922(a)(6) for representing on ATF form that he was actual buyer of firearms; district court properly held that statute was not unconstitutionally vague and defendant's "straw purchases" of firearms on behalf of others who provided purchaser money clearly violated § 922(a)(6)); United States v. Kirchoff, 387 F.3d 748, 750 (8th Cir. 2004) (denial of motion to dismiss indictment reviewed de novo), petition for cert. filed, No. 04-9167 (U.S. Mar. 14, 2005). As to the obstruction-of-justice enhancement, this is a matter that we will not review because the district court departed below the Sentencing Guidelines range that would have been applicable absent the enhancement. See United States v. Baker, 64 F.3d 439, 441 (8th Cir. 1995).

Having carefully reviewed the record under Penson v. Ohio, 488 U.S. 75, 80 (1988), we find no nonfrivolous issues relating to Blakely. Accordingly, we grant counsel's motion to withdraw, and we affirm.