

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 11-1514

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United States of America,	*	
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Appellee,	*	
	*	Appeal from the United States
v.	*	District Court for the Eastern
	*	District of Missouri.
Shawn Michael Aiello,	*	
	*	[UNPUBLISHED]
Appellant.	*	

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Submitted: November 14, 2011  
Filed: February 9, 2012

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Before RILEY, Chief Judge, BEAM, and BYE, Circuit Judges.

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PER CURIAM.

Shawn Aiello appeals his conviction and mandatory minimum fifteen-year sentence, following a guilty plea, to being a felon in possession of a firearm, 18 U.S.C. §§ 922(g) & 924(e). After pleading guilty, Aiello unsuccessfully argued to the district court<sup>1</sup> at sentencing that his prosecution under § 922(g) violated his Second Amendment right to keep and bear arms, citing District of Columbia v. Heller, 554 U.S. 570 (2008), and McDonald v. City of Chicago, 130 S. Ct. 3020 (2010). He renews this argument on appeal. To the extent, as the government urges, that Aiello's

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<sup>1</sup>The Honorable Rodney W. Sippel, United States District Judge for the Eastern District of Missouri.

briefing can be read to present an "as applied" challenge to § 922(g), it is barred by the appellate waiver of all non-jurisdictional issues in his plea agreement. See United States v. Joos, 638 F.3d 581, 586 (8th Cir. 2011) (holding that "as applied" constitutional challenges to statutes are non-jurisdictional), cert. denied, 2012 WL 171246 (U.S. Jan. 23, 2012). To the extent, as Aiello urges, that he brings a facial challenge to § 922(g), his arguments are foreclosed by our circuit precedent. See id. (noting that we have previously upheld § 922(g) against a Second Amendment challenge). We affirm.

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