

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-1859

UNITED STATES OF AMERICA

v.

ERIC JOHNSON,
a/k/a DERRICK JOHNSON,
a/k/a JASON WILLIAMS

Eric Johnson, Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
D.C. Criminal No. 02-cr-00436
(Honorable William H. Yohn, Jr.)

Submitted Pursuant to Third Circuit LAR 34.1(a)
September 13, 2004

Before: SCIRICA, *Chief Judge*, ALITO and AMBRO, *Circuit Judges*

(Filed September 23, 2004)

OPINION OF THE COURT

SCIRICA, *Chief Judge*.

A jury found defendant Eric Johnson guilty of possession of cocaine base with intent to distribute, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B) (Count One); possession of and carrying a firearm in connection with the Count One drug trafficking offense, in violation of 18 U.S.C. § 924(c)(1)(A)(I) (Count Two); and possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) (Count Three). He was sentenced to 164 months in prison, five years supervised release, a fine of \$1,000, and a special assessment of \$300.

In this appeal,¹ Johnson challenges only his conviction on Count Three, contending the felon-in-possession statute is an invalid exercise of the Commerce Clause. Johnson acknowledges we have already ruled that this statutory provision passes constitutional muster. *See United States v. Singletary*, 268 F.3d 196, 197 (3d Cir. 2001); *United States v. Gateward*, 84 F.3d 670, 671-72 (3d Cir. 1996). Johnson wishes, however, to preserve the issue should this Court *en banc* or the Supreme Court reverse the *Singletary* decision. Because we are bound by *Singletary*, we will reject Johnson's challenge.

We will affirm the judgment of conviction and sentence.

¹We have appellate jurisdiction under 28 U.S.C. § 1291.