

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 11-1514

United States of America,

Appellee,

v.

Shawn Michael Aiello,

Appellant.

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Appeal from the United States
District Court for the Eastern
District of Missouri.

[UNPUBLISHED]

Submitted: November 14, 2011

Filed: February 9, 2012

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

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 court¹ 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

¹The 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.
