

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

August 21, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERIC RONALD BOLDUAN,

Defendant - Appellant.

No. 19-1050
(D.C. No. 1:17-CR-00384-CMA-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MATHESON, MCKAY, and BACHARACH**, Circuit Judges.

Mr. Eric Bolduan appeals a supervised-release condition requiring him to register as a sex offender. We affirm.

The registration requirement. The registration requirement stemmed from Mr. Bolduan's 1993 conviction on a Minnesota charge of second-degree attempted sexual assault. At that time, federal law did not require

* The parties do not request oral argument, and it would not materially help us to decide this appeal. We have thus decided the appeal based on the appellate briefs and the record on appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G).

This order and judgment does not constitute binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

sex offenders to register.¹ Roughly thirteen years later, Congress enacted the Sex Offender Registration and Notification Act, requiring registration of sex offenders. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 590 (2006); 34 U.S.C. §§ 20911(5), 20913(a). But the statute did not say whether the registration requirement would apply to sex offenders, like Mr. Bolduan, who had already completed their sentences. For these offenders, the statute authorized the Attorney General to determine the applicability of the registration requirement. 34 U.S.C. § 20913(d). The year after Congress enacted the Sex Offender Registration and Notification Act, the Attorney General exercised this authority and made the registration requirement applicable to all sex offenders, including those convicted of a sex offense prior to enactment of the Act. 28 C.F.R. § 72.3.

The imposition of a registration requirement for Mr. Bolduan. Earlier this year, Mr. Bolduan was convicted on federal charges of making threats by interstate communications and stalking through electronic means.

18 6U.S.C. §§ 875, 2261A(2)(B). At sentencing, the district court imposed supervised-release conditions, including a requirement for Mr. Bolduan to register as a sex offender. Mr. Bolduan appeals this condition, arguing that

¹ Minnesota law did require registration. Minn. Stat. Ann. § 243.166(6)(d)(1). But Minnesota's registration requirement is not involved in this appeal.

the condition was based on Congress's unconstitutional delegation of power to the Attorney General over the applicability of the registration requirement.

The decision in Gundy. During the appellate briefing, the Supreme Court decided *Gundy v. United States*, 139 S. Ct. 2116 (2019). In *Gundy*, the Supreme Court held that Sex Offender Registration and Notification Act's delegation to the Attorney General was not an unconstitutional delegation of Congress's legislative power.² *See* 139 S. Ct. at 2121 (plurality op.); *id.* at 2131 (Alito, J., concurring in the judgment). Given the Supreme Court's recent decision in *Gundy*, we conclude that the district court did not err in requiring Mr. Bolduan to register as a sex offender.

Affirmed.

Entered for the Court

Robert E. Bacharach
Circuit Judge

² We had likewise upheld the constitutionality of this delegation to the Attorney General. *United States v. Nichols*, 775 F.3d 1225 (10th Cir. 2014), *reversed on other grounds*, 136 S. Ct. 1113 (2016).