**NONPRECEDENTIAL DISPOSITION**
To be cited only in accordance with FED. R. APP. P. 32.1

# United States Court of Appeals

**For the Seventh Circuit**
**Chicago, Illinois 60604**

Submitted January 16, 2025
Decided January 24, 2025

**Before**

DIANE S. SYKES, *Chief Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 24-1851

UNITED STATES OF AMERICA,
*Plaintiff-Appellee*,

*v*.

MATTHEW E. MOSBY,
*Defendant-Appellant*.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 1:22CR00145-001

Matthew P. Brookman,
*Judge*.

**O R D E R**

Matthew Mosby pleaded guilty to possessing a firearm as a felon under 18 U.S.C. § 922(g)(1). The district judge sentenced Mosby to an above-guidelines sentence of seven years in prison and three years of supervised release. Mosby has filed a notice of appeal, but his appointed counsel believes that the appeal is frivolous and seeks to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). Mosby has not responded to counsel's motion to withdraw. *See* CIR. R. 51(b). Based on our review of counsel's

submission, and following our practice in similar appeals, we will suspend this appeal to determine if it presents a nonfrivolous issue.

Counsel acknowledges that Mosby was convicted under § 922(g)(1). The constitutionality of § 922(g)(1) has been questioned after *New York State Rifle & Pistol Association, Inc. v. Bruen*, in which the Supreme Court held that restrictions on possessing firearms are constitutional only if there is a tradition of such regulation in the Nation's history. 597 U.S. 1, 24 (2022). We have been holding in abeyance appeals involving convictions under § 922(g)(1) pending the outcome of *United States v. Prince*, No. 23-3155 (7th Cir. argued Dec. 11, 2024), in which we will determine whether that statute violates the Second Amendment. *See, e.g.*, *United States v. Mowen*, No. 23-1890 (7th Cir. Feb. 23, 2024); *United States v. Taylor*, No. 22-3298 (7th Cir. July 9, 2024).

We acknowledge that Mosby did not preserve this challenge in the district court, so our review would be for plain error. *See Greer v. United States*, 593 U.S. 503, 507 (2021). Under the state of the law as of today, any error would not be plain. Still, after *Prince* is decided, Mosby might be able to argue reasonably that the district judge plainly erred in this case. *See Henderson v. United States*, 568 U.S. 266, 269 (2013) (error may become "plain" under precedents released while appeal is pending). For that reason, we suspended the appeal sua sponte in *United States v. Randall*, No. 23-1261 (7th Cir. May 8, 2024), an *Anders* case implicating a potential plain-error challenge to § 922(g)(1). We also note that Mosby does not face another, concurrent sentence that might obviate a plain-error challenge to § 922(g). *Cf. United States v. Leija-Sanchez*, 820 F.3d 899, 902 (7th Cir. 2016) (concurrent sentences can justify refusal to review possible plain error in the lesser sentence). Thus, consistent with our practice in these cases, we will hold this appeal in abeyance pending the outcome of *Prince*.

Proceedings in this appeal are SUSPENDED pending resolution of *Prince*. Counsel shall file a statement of position within 14 days of a decision in that case, stating whether counsel intends to withdraw the *Anders* motion or further supplement the *Anders* brief, or whether a further stay is appropriate.