

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 09-7164**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EZELL MCKELVER,

Defendant - Appellant.

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Appeal from the United States District Court for the District of South Carolina, at Charleston. Patrick Michael Duffy, District Judge. (5:03-cr-00262-PMD-1)

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Submitted: December 17, 2009

Decided: December 28, 2009

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Before WILKINSON, NIEMEYER, and AGEE, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Ezell McKelver, Appellant Pro Se. Leesa Washington, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ezell McKelver pled guilty to two counts of felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(e) (2006). He was sentenced to 180 months' imprisonment. He now appeals the district court's margin order denying his subsequently filed motion to dismiss the indictment as defective under Fed. R. Crim. P. 12(b)(2).<sup>\*</sup> We have reviewed the record and find no reversible error. Accordingly, we affirm. United States v. McKelver, No. 5:03-cr-00262-PMD-1 (D.S.C. May 26, 2009). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

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<sup>\*</sup> McKelver likely intended to bring this motion under Fed. R. Crim. P. 12(b)(3)(B). However, as relief is unavailable to him under either subsection of Rule 12, we find this to be of no consequence.