Appendix A

NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. AYANNA JEANETTA ANGLE, AKA Ayanna Angle, Defendant-Appellant.	No. 17-10499 D.C. No. 2:17-cr-00197-DJH-2 MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Diane J. Humetewa, District Judge, Presiding

Argued and Submitted December 17, 2018
San Francisco, California

Before: GILMAN,** PAEZ, and OWENS, Circuit Judges.

Ayanna Jeanetta Angle appeals from her conviction and sentence under 18 U.S.C. §§ 922(d)(1) and 922(g)(1). As the parties are familiar with the facts, we do not recount them here. We have jurisdiction under 28 U.S.C. § 1291, and we

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Ronald Lee Gilman, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

affirm in part, vacate in part, and remand.

After hearing argument, we reviewed Angle's *Batson* challenge that the government discriminatorily struck three Hispanic potential jurors. We affirmed the district court's conclusion that Angle failed to show purposeful discrimination as to Jurors 9 and 27. *See Miller-El v. Cockrell*, 537 U.S. 322, 328-29 (2003). However, we ordered a limited remand, retaining jurisdiction over any further proceedings, with directions to conduct the requisite *Batson* step-three analysis as to Juror 41. With the district court's order as to Juror 41 now in hand, we review Angle's third *Batson* challenge, as well as the remaining issues on appeal.

1. After the district court found the government's proffered justification to be race-neutral, it had an obligation to complete the third-step of *Batson*. *See United States v. Alanis*, 335 F.3d 965, 966 (9th Cir. 2003). On remand, the district court did so, thoroughly considering the record to "make a deliberate decision whether purposeful discrimination occurred." *Id.* at 969. We now review its finding on remand that "the Government met its burden of persuasion that it struck Juror 41 for a race-neutral reason" for clear error. *See McClain v. Prunty*, 217 F.3d 1209, 1220 (9th Cir. 2000). The district court reasonably concluded, based on the "totality of the relevant facts," *Kesser v. Cambra*, 465 F.3d 351, 360 (9th Cir. 2006) (citation omitted), that Angle's argument was "unpersuasive" and "insufficient." Because there was no clear error, we affirm.

2. Angle also argues that the district court erred in denying her motion to dismiss the indictment on multiplicity grounds because § 922(d) is a lesser-included offense of § 922(g). Angle "may be prosecuted and sentenced for the same act under separate federal criminal statutes if each statue requires a proof of fact which the other does not." *United States v. Gann*, 732 F.2d 714, 718 (9th Cir. 1984) (citing *Blockburger v. United States*, 284 U.S. 299, 304 (1932)). We review de novo a claim that an indictment is multiplicitous. *See United States v. Stewart*, 420 F.3d 1007, 1012 (9th Cir. 2005).

Focusing on each offense's statutory elements, *see United States v. Wahchumwah*, 710 F.3d 862, 869 (9th Cir. 2013), we conclude that § 922(d) and § 922(g) are not multiplicitous. Section 922(g) contains a jurisdictional element, requiring the firearm to travel in interstate or foreign commerce, that § 922(d) does not. *See Huddleston v. United* States, 415 U.S. 814, 833 (1974) (explaining that § 922(d) encompasses "transactions that are wholly intrastate"). Similarly, under § 922(d)(1), the defendant must "sell or otherwise dispose of any firearm," whereas § 922(g)(1) does not require evidence of a firearm transfer. Therefore, the district court correctly denied Angle's motion.

3. Next, Angle challenges her three-year supervised release term as substantively unreasonable. We review a sentence's length for abuse of discretion. *See United States v. Apodaca*, 641 F.3d 1077, 1079 (9th Cir. 2011). The district

court properly considered the 18 U.S.C. § 3553(a) factors in light of the case's facts and Angle's personal history to determine that supervised release was necessary because of her prior drug use and employment history. *See United States v. Castro-Verdugo*, 750 F.3d 1065, 1072 (9th Cir. 2014). Moreover, we are "particularly deferential" because the sentence is within the Sentencing Guidelines recommended range. *See United States v. Williams*, 636 F.3d 1229, 1234 (9th Cir. 2011); U.S. Sentencing Guidelines Manual § 5D1.2(a)(2) (U.S. Sentencing Comm'n 2016). Since the "totality of the circumstances supports the sentence," *United States v. Blinkinsop*, 606 F.3d 1110, 1116 (9th Cir. 2010), we affirm Angle's supervised-release term.

4. Finally, Angle contests the imposition of several supervised-release conditions on various grounds. We review the "impos[ition] [of] a particular condition of supervised release for abuse of discretion." *United States v. Rudd*, 662 F.3d 1257, 1260 (9th Cir. 2011). Although the district court has "significant discretion in crafting terms of supervised release," such discretion is not "boundless." *United States v. Weber*, 451 F.3d 552, 557 (9th Cir. 2006).

First, we reject Angle's argument that Standard Condition 9, requiring notice of arrest or questioning by law enforcement, and Standard Condition 10, prohibiting the possession of a dangerous weapon, are unconstitutionally vague. We review constitutional challenges to supervised release conditions de novo. *See*

United States v. Evans, 883 F.3d 1154, 1159-60 (9th Cir. 2018). Angle's argument lacks merit because neither condition "defines the forbidden conduct in terms so vague that it fails to provide people of ordinary intelligence with fair notice of what is prohibited." *United States v. Sims*, 849 F.3d 1259, 1260 (9th Cir. 2017).

Second, we affirm the imposition of Special Condition 3, requiring Angle to abstain from alcohol. The district court reasonably determined that this condition was needed because of Angle's prior substance abuse. *See United States v. Sales*, 476 F.3d 732, 735-36 (9th Cir. 2007). However, we agree with the parties that the written judgment must be amended because the district court's oral pronouncement and written judgment conflict. *See United States v. Napier*, 463 F.3d 1040, 1042 (9th Cir. 2006). The district court orally prohibited Angle from the "use of alcohol," but the written judgment also prohibits the "possess[ion] of alcohol." Because an oral pronouncement "controls over a written sentence that differs from it," *id.*, we remand to the district court with instructions to strike the word "possess" from the written judgment.

Third, we affirm the imposition of Special Condition 4, requiring Angle to submit her DNA. Although the district court misstated the authority mandating this condition, its mistake was harmless. *See* Fed. R. Crim. P. 52(a). A sentencing court is statutorily required to impose this condition, *see* 18 U.S.C. § 3583(d), thus the district court was not even required to orally pronounce it. *See Napier*, 463

F.3d at 1043 (explaining that conditions mandated under § 3583(d) are "deemed to be implicit in an oral sentence imposing supervised release").

Finally, we remand to the district court to reconsider Standard Condition 8, barring Angle from contact with convicted felons, and Special Condition 6, barring Angle from contact with Jose Manuel Martinez, her co-defendant. A condition "limit[ing] a defendant to associating with 'law-abiding individuals'" is permissible. *United States v. Napulou*, 593 F.3d 1041, 1045 (9th Cir. 2010). However, when that condition "singles out a person with whom the individual on supervised release has an intimate relationship," the sentencing court must utilize enhanced procedural safeguards. *Id*. at 1047. The court must engage in an "individualized review of that person and the relationship at issue," *id*., and offer a "sufficient explanation" why this significant infringement on the defendant's liberty interest is necessary, *United States v. Collins*, 684 F.3d 873, 890 (9th Cir. 2012).

The parties agree that the district court procedurally erred in imposing Standard Condition 8, prohibiting Angle from contact with convicted felons, because it will infringe on her relationship with her father, and they request limited remand. Because the record is devoid of any explanation for the need to infringe on this parent-child relationship, we agree. *See United States v. Wolf Child*, 699 F.3d 1082, 1087 (9th Cir. 2012). We remand for the district court to either exempt

Angle's father from Standard Condition 8 or explain why it should apply to him.

We also conclude that the district court procedurally erred in imposing Special Condition 6, preventing Angle from contacting Martinez, whom she describes as her "life partner" and "father figure to her children." The district court orally pronounced this condition without addressing Angle's and Martinez's longstanding relationship or articulating the need for the condition. Prohibiting contact with a "life partner" demands an individualized review and a sufficient on-the-record explanation, neither of which was provided below. *See Napulou*, 593 F.3d at 1047. We, therefore, remand for the district court to abide by the requisite procedure in determining whether to impose Special Condition 6.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.