

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 28 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LOREN JOEL MCREYNOLDS,

Defendant-Appellant.

No. 19-10343

D.C. No.

3:18-cr-08052-DGC-1

District of Arizona,
Prescott

ORDER

Before: TALLMAN, BYBEE, and BADE, Circuit Judges.

Judges Tallman, Bybee, and Bade have voted to deny the petition for panel rehearing. Judge Bade has voted to deny the petition for rehearing en banc, and Judges Tallman and Bybee have so recommended. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for panel rehearing and the petition for rehearing en banc filed by Defendant-Appellant Loren Joel McReynolds (Dkt. 47) are **DENIED**.

APPENDIX “B”

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 19 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LOREN JOEL MCREYNOLDS,

Defendant-Appellant.

No. 19-10343

D.C. No.

3:18-cr-08052-DGC-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona

David G. Campbell, District Judge, Presiding

Submitted November 17, 2020**
Phoenix, Arizona

Before: TALLMAN, BYBEE, and BADE, Circuit Judges.

Defendant-Appellant Loren Joel McReynolds appeals his forty-six-month sentence of imprisonment following his conviction by guilty plea to possession of a firearm and ammunition by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). We have jurisdiction pursuant to 28 U.S.C. § 1291,

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

and we affirm.

McReynolds argues that the district court erred in finding his illegal possession of the Bushmaster AR-15 rifle, charged in Count 12 of the indictment—which remained pending at the time of sentencing—was relevant conduct when calculating his base offense level. “A district court’s factual determination that conduct is ‘relevant conduct’ within the meaning of section 1B1.3 of the Sentencing Guidelines is reviewed for clear error.” *United States v. Kahlon*, 38 F.3d 467, 470 (9th Cir. 1994) (citation omitted).

At sentencing, the district court denied McReynolds’ objections to the presentence report’s references to his possession of the Bushmaster AR-15 rifle, citing U.S.S.G. § 1B1.4, 18 U.S.C. § 3661, and *United States v. Watts*, 519 U.S. 148, 157 (1997) (per curiam) (holding that “a jury’s verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been proved by a preponderance of the evidence”). After finding that “more than a preponderance of the evidence” established that McReynolds possessed the Bushmaster AR-15 rifle, the district court concluded that the Bushmaster rifle “is properly taken into account” as relevant conduct “for purposes of establishing a base offense level of 20.” The district court did not clearly err in doing so.

“In determining the sentence to impose . . . , the court may consider, without

limitation, any information concerning the background, character and conduct of the defendant, unless otherwise prohibited by law.” U.S.S.G. § 1B1.4 (citing 18 U.S.C. § 3661). Section 1B1.3 of the Guidelines “describes in sweeping language the conduct that a sentencing court may consider in determining the applicable guideline range,” *Watts*, 519 U.S. at 152–53, including as relevant conduct other offenses that were “part of the same course of conduct or common scheme or plan as the offense of conviction,” U.S.S.G. § 1B1.3(a)(2). “Relevant conduct in firearms cases generally arises . . . where the firearms are otherwise legal but the defendant, usually due to criminal history or prohibited status under federal law, is not able to legally possess them.” *United States v. Vargem*, 747 F.3d 724, 732 (9th Cir. 2014) (citations omitted).

In this case, the district court properly considered McReynolds’ possession of the Bushmaster AR-15 rifle set forth in Count 12 of the indictment because this additional felon-in-possession count was “part of the same course of conduct or common scheme or plan as the offense of conviction.” U.S.S.G. § 1B1.3(a)(2). Possession of another firearm by a convicted felon is relevant conduct where that possession is close in time to the offense of conviction. *See United States v. Nichols*, 464 F.3d 1117, 1122–24 (9th Cir. 2006). Not only was the offense charged in Count 12 identical to the offense of conviction—being a felon in possession of a firearm—but the district court’s findings at sentencing established

by a preponderance of the evidence that McReynolds possessed the Bushmaster AR-15 rifle less than six months after the Remington rifle was seized by law enforcement on January 13, 2017. The district court’s finding that McReynolds’ illegal possession of the Bushmaster AR-15 rifle within six months of his possession of the Remington rifle was relevant conduct to his prosecution for felon in possession was not clearly erroneous.

McReynolds also contends that the district court erred in denying a sentence reduction pursuant to U.S.S.G. § 2K2.1(b)(2), which provides for a decrease in offense level to 6 “[i]f the defendant, *other than a defendant subject to subsection . . . (a)(4) . . .*, possessed all ammunition and firearms solely for lawful sporting purposes or collection, and did not unlawfully discharge or otherwise unlawfully use such firearms or ammunition.” (emphasis added). But because McReynolds’ base offense level was properly calculated under § 2K2.1(a)(4), § 2K2.1(b)(2) is inapplicable.

Finally, McReynolds argues that his forty-six-month sentence was substantively unreasonable. “[T]he substantive reasonableness of a sentence—whether objected to or not at sentencing—is reviewed for abuse of discretion.” *United States v. Autery*, 555 F.3d 864, 871 (9th Cir. 2009). “The touchstone of ‘reasonableness’ is whether the record as a whole reflects rational and meaningful consideration of the factors enumerated in 18 U.S.C. § 3553(a).” *United States v.*

Ressam, 679 F.3d 1069, 1089 (9th Cir. 2012) (en banc) (internal quotation marks and citation omitted).

Examining the nature and circumstances of the offense under § 3553(a), the district court indicated that McReynolds' conduct exceeded "mere possession of a gun by somebody convicted of a felony." The district court found that McReynolds used the gun in his business, to impress clients, and "[b]y a preponderance of the evidence . . . to engage in other illegal activities on federal lands." The district court remarked that this was a "serious concern" because McReynolds appeared to "completely" disregard federal law. When considering McReynolds' history and characteristics, the district court took note of the "number of criminal convictions" in his criminal history. In determining the need for the sentence imposed to be "sufficient but not greater than necessary" to accomplish the objectives set forth in § 3553(a)(2), the district court concluded that the most important objectives in this case were to "provide adequate deterrence from further criminal conduct" and to "promote respect for the law," noting that there "was no respect for the law in [McReynolds'] actions in this case."

Ultimately, the district court concluded that a two-level upward variance from the top of the Guidelines' range to a sentence of forty-six months' imprisonment was "sufficient but not greater than necessary to promote respect for the law, to afford adequate deterrence, and to accomplish the other purposes set

forth in Section 3553(a).” We do not “have a definite and firm conviction that the district court committed a clear error of judgment in the conclusion it reached upon weighing the relevant factors.” *United States v. Amezcua-Vasquez*, 567 F.3d 1050, 1055 (9th Cir. 2009).

Further, McReynolds’ contention that his sentence is substantively unreasonable because the district court improperly relied on “conduct that was still unproven as the remaining charges were still pending for trial” also fails. “[A] sentencing judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider, or the source from which it may come.” *United States v. Christensen*, 732 F.3d 1094, 1102 (9th Cir. 2013) (citation omitted). Indeed, “sentencing courts have broad discretion to consider various kinds of information,” *Watts*, 519 U.S. at 151, as “[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence,” 18 U.S.C. § 3661.

AFFIRMED.

APPENDIX "C"

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America

v.

Loren Joel McReynolds

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

No. CR-18-08052-001-PCT-DGC

Kevin Lee Burns (CJA)

Attorney for Defendant

USM#: 21775-081

THE DEFENDANT ENTERED A PLEA OF guilty on 7/9/2019 to Count 1 of the Indictment.

ACCORDINGLY, THE COURT HAS ADJUDICATED THAT THE DEFENDANT IS GUILTY OF THE FOLLOWING OFFENSE(S): violating Title 18, U.S.C. §§922(g)(1) and 924(a)(2), Possession of Firearm or Ammunition by Convicted Felon, a Class C Felony offense, as charged in Count 1 of the Indictment.

IT IS THE JUDGMENT OF THIS COURT THAT the defendant is committed to the custody of the Bureau of Prisons for a term of **FORTY-SIX (46) MONTHS**. Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **THREE (3) YEARS**.

IT IS FURTHER ORDERED that defendant's remaining counts are set for Jury Trial on November 4, 2019 at 9:00 a.m. in Courtroom 603.

IT IS FURTHER ORDERED that defendant's interest in the following property shall be forfeited to the United States: Remington Model 700 .260 caliber rifle; 25 rounds of ammunition seized on January 13, 2017.

CRIMINAL MONETARY PENALTIES

The defendant shall pay to the Clerk the following total criminal monetary penalties:

SPECIAL ASSESSMENT: \$100.00 FINE: WAIVED RESTITUTION: N/A

The defendant shall pay a special assessment of \$100.00 which shall be due immediately.

The Court finds the defendant does not have the ability to pay a fine and orders the fine waived.

If incarcerated, payment of criminal monetary penalties are due during imprisonment at a rate of not less than \$25 per quarter and payment shall be made through the Bureau of Prisons' Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk of U.S. District Court, Attention: Finance, Suite 130, 401 West Washington Street, SPC 1, Phoenix, Arizona 85003-2118. Payments should be credited to the various monetary penalties imposed by the Court in the priority established under 18 U.S.C. § 3612(c). The total special assessment of \$100.00 shall be paid pursuant to Title 18, United States Code, Section 3013 for Count 1 of the Indictment.

Any unpaid balance shall become a condition of supervision and shall be paid within 90 days prior to the expiration of supervision. Until all restitutions, fines, special assessments and costs are fully paid, the defendant shall immediately notify the Clerk, U.S. District Court, of any change in name and address. The Court hereby waives the imposition of interest and penalties on any unpaid balances.

SUPERVISED RELEASE

It is ordered that while on supervised release, the defendant must comply with the mandatory and standard conditions of supervision as adopted by this court, in General Order 17-18, which incorporates the requirements of USSG §§ 5B1.3 and 5D1.2. Of particular importance, the defendant must not commit another federal, state, or local crime during the term of supervision. Within 72 hours of sentencing or release from the custody of the Bureau of Prisons the defendant must report in person to the Probation Office in the district to which the defendant is released. The defendant must comply with the following conditions:

MANDATORY CONDITIONS

- 1) You must not commit another federal, state or local crime.
- 2) You must not unlawfully possess a controlled substance. The use or possession of marijuana, even with a physician's certification, is not permitted.
- 3) You must refrain from any unlawful use of a controlled substance. The use or possession of marijuana, even with a physician's certification, is not permitted. Unless suspended by the Court, you must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

STANDARD CONDITIONS

- 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of sentencing or your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
- 3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
- 4) You must answer truthfully the questions asked by your probation officer.
- 5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you

must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

- 7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- 9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
- 10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- 11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- 12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
- 13) You must follow the instructions of the probation officer related to the conditions of supervision.

SPECIAL CONDITIONS

The following special conditions are in addition to the conditions of supervised release or supersede any related standard condition:

- 1) You must participate as instructed by the probation officer in a program of substance abuse treatment (outpatient and/or inpatient) which may include testing for substance abuse. You must contribute to the cost of treatment in an amount to be determined by the probation officer.
- 2) You must submit your person, property, house, residence, vehicle, papers, or office to a search conducted by a probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

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- 3) You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.
- 4) You must not use or possess alcohol or alcoholic beverages.
- 5) You must cooperate in the collection of DNA as directed by the probation officer.

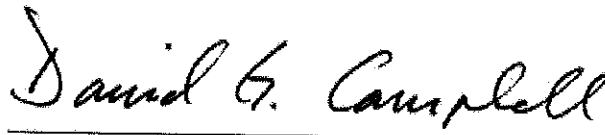
THE DEFENDANT IS ADVISED OF DEFENDANT'S RIGHT TO APPEAL BY FILING A NOTICE OF APPEAL IN WRITING WITHIN 14 DAYS OF ENTRY OF JUDGMENT.

The Court may change the conditions of probation or supervised release or extend the term of supervision, if less than the authorized maximum, at any time during the period of probation or supervised release. The Court may issue a warrant and revoke the original or any subsequent sentence for a violation occurring during the period of probation or supervised release.

The defendant is remanded to the custody of the United States Marshal.

Date of Imposition of Sentence: **Tuesday, October 01, 2019**

Dated this 4th day of October, 2019.



David G. Campbell
Senior United States District Judge

RETURN

I have executed this Judgment as follows:

defendant delivered on _____ to _____ at _____, the institution
designated by the Bureau of Prisons with a certified copy of this judgment in a Criminal case.

United States Marshal

By: _____

Deputy Marshal