

No.

In The Supreme Court of The United States

Reuben Conway,

Petitioner,

v.

United States of America,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

Petitioner's Appendix

Appendix A	App. 1
<i>United States v. Conway</i> , No. 2:16-cr-00013-GMN-NJK, Dkt. 1 (D. Nev. Jan. 19, 2016), Indictment	
Appendix B	App. 3
<i>United States v. Conway</i> , No. 2:16-cr-00013-GMN-NJK, Dkt. 54 (D. Nev. Nov. 13, 2017), District Court Judgment of Conviction	
Appendix C	App. 10
<i>United States v. Conway</i> , 17-10497, Dkt. 40 (9th Cir. Mar. 22, 2022), Memorandum Disposition	

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FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
JAN 19 2016	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

7 **UNITED STATES DISTRICT COURT**
 8 **DISTRICT OF NEVADA**

9 **-oOo-**

12 UNITED STATES OF AMERICA,)
 13)
 14 PLAINTIFF,)
 15)
 16 vs.)
 17)
 18 REUBEN CONWAY,)
 19)
 20 DEFENDANT.)

CRIMINAL INDICTMENT

2:16-CR- 13

VIOLATION:

18 U.S.C. §§ 922(g)(1) and 924(a)(2) - Felon
in Possession of a Firearm.

21 **THE GRAND JURY CHARGES THAT:**

22 On or about December 20, 2015, in the State and Federal District of Nevada,

23 **REUBEN CONWAY,**

24 having been convicted of crimes punishable by imprisonment for a term exceeding one year,
 25 in the State of Nevada, to wit: Attempt Burglary, in the Eighth Judicial District Court, Clark
 26 County, on or about June 8, 2009, in Case No. C252870; Possession of Controlled Substance
 27 with Intent to Sell, in the Eighth Judicial District Court, Clark County, on or about April 29,
 28 2013, in Case No. C285871; and Felon in Possession of a Firearm, in the United States
 District Court for the District of Nevada, on or about May 6, 2015, in Case No. 2:13-cr-124-

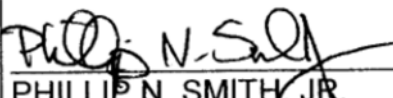
1 APG-PAL, did knowingly possess a firearm, to wit: a Kel-Tec 9-millimeter handgun bearing
2 serial number AZS01, said possession being in and affecting interstate commerce and said
3 firearm having been shipped and transported in interstate commerce, all in violation of Title
4 18, United States Code, Sections 922(g)(1) and 924(a)(2).

5 **DATED:** this 19th day of January, 2016.

6 **A TRUE BILL:**

7
8
9 */S/*
10 FOREPERSON OF THE GRAND JURY

11
12 DANIEL G. BOGDEN
13 United States Attorney

14 
15 PHILLIP N. SMITH, JR.
16 Assistant United States Attorney

UNITED STATES DISTRICT COURT

District of Nevada

UNITED STATES OF AMERICA

v.

REUBEN CONWAY

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:16-cr-00013-GMN-NJK-1

USM Number: 49313-048

Rachel M. Korenblat, AFD

Defendant's Attorney

THE DEFENDANT:☒ pleaded guilty to count(s) 1 in the Indictment (ECF No. 1)☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

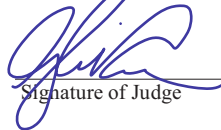
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC §§ 922(g)(1) and 924(a)(2)	Felon in Possession of a Firearm	12/20/2015	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

11/8/2017

Date of Imposition of Judgment



Signature of Judge

Gloria M. Navarro, Chief Judge U.S. District Court

Name and Title of Judge

Date November 13, 2017

DEFENDANT: REUBEN CONWAY
CASE NUMBER: 2:16-cr-00013-GMN-NJK-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

92 MONTHS, Concurrent to C-16-316006; Sentence to commence beginning on November 8, 2017.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the Defendant be allowed to serve his term of incarceration at a facility in or as close to Mississippi as possible to be close to family.

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
a _____ , with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: REUBEN CONWAY

CASE NUMBER: 2:16-cr-00013-GMN-NJK-1

SUPERVISED RELEASEUpon release from imprisonment, you will be on supervised release for a term of : THREE (3) YEARS**MANDATORY CONDITIONS**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. 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, not to exceed 104 tests annually.
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: REUBEN CONWAY
CASE NUMBER: 2:16-cr-00013-GMN-NJK-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of 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.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: REUBEN CONWAY
CASE NUMBER: 2:16-cr-00013-GMN-NJK-1

SPECIAL CONDITIONS OF SUPERVISION

1. Substance Abuse Treatment – You must participate in a substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). You must pay the costs of the program.
2. Drug Testing – You must submit to substance abuse testing to determine if you have used a prohibited substance. Testing shall not exceed 104 tests per year. You must pay the costs of the testing. You must not attempt to obstruct or tamper with the testing methods.
3. No Contact – You must not communicate, or otherwise interact, with any victim or witness, either directly or through someone else, without first obtaining the permission of the probation office.
4. No Gang Affiliation – You must not communicate, or otherwise interact, with any known member of the True Hard Niggas, Piru Bloods, or Rolling 60s gangs, without first obtaining the permission of the probation officer.
5. Place Restriction – Types of Establishments – You must not knowingly enter any Lacy's Lounge located at 1842 North Las Vegas Boulevard, North Las Vegas, Nevada, without first obtaining the permission of the probation officer.
6. Educational Program – You must participate in an educational services program and follow the rules and regulations of that program. Such programs may include high school equivalency preparation, English as a Second Language classes, and other classes designed to improve your proficiency in skills such as reading, writing, mathematics, or computer use. You must pay the costs of the program.
7. Search and Seizure - You shall submit to the search of your person, property, residence, or automobile under your control by the probation officer or any other authorized person under the immediate and personal supervision of the probation officer, without a search warrant to ensure compliance with all conditions of release.

DEFENDANT: REUBEN CONWAY

CASE NUMBER: 2:16-cr-00013-GMN-NJK-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

TOTALS	\$ _____	\$ _____
---------------	----------	----------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: REUBEN CONWAY
CASE NUMBER: 2:16-cr-00013-GMN-NJK-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
- ☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT A assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 22 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 17-10497

Plaintiff-Appellee,

D.C. No.

v.

2:16-cr-00013-GMN-NJK-1

REUBEN CONWAY,

MEMORANDUM*

Defendant-Appellant.

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

Gloria M. Navarro, District Judge, Presiding

Submitted March 16, 2022**

Before: SILVERMAN, MILLER, and BUMATAY, Circuit Judges.

Reuben Conway appeals from the district court's judgment and challenges his guilty-plea conviction and 92-month sentence for being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* 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).

Conway first asserts that the district court erred by treating his prior conviction for possession of cocaine, in violation of Nevada Revised Statute (NRS) § 453.337, as a controlled substance offense under U.S.S.G. § 2K2.1(a)(4)(A). This claim fails because, contrary to Conway's assertion, § 453.337 is divisible. *See United States v. Figueroa-Beltran*, 995 F.3d 724, 733 (9th Cir. 2021). Because there is no dispute that Conway's offense involved cocaine, the district court properly treated it as a controlled substance offense under U.S.S.G. § 2K2.1(a)(4)(A). *See id.* at 733-34.

Conway further argues that the district court lacked jurisdiction over his case because the indictment did not charge that he knew of his status as a convicted felon. *See Rehaif v. United States*, 139 S. Ct. 2191 (2019). However, this omission did not deprive the district court of jurisdiction. *See United States v. Cotton*, 535 U.S. 625, 630 (2002) (“[D]efects in an indictment do not deprive a court of its power to adjudicate a case.”); *United States v. Arnt*, 474 F.3d 1159, 1162 (9th Cir. 2007) (same).

AFFIRMED.