

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

April 6, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RODNEY LAVONNE BURTON,

Defendant - Appellant.

No. 20-5082
(D.C. No. 4:19-CR-00105-GKF-1)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **McHUGH, KELLY**, and **BRISCOE**, Circuit Judges.

Appellant-Defendant Rodney Lavonne Burton appeals his one-count conviction for being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Burton argues that because he is “a Free Sovereign Moor,” he is “eternally in the Jurisdiction of [his] Ancient Moabite Forebeares” and the case against him should accordingly be dismissed. Aplt. Br. at 2–3. When Burton raised this issue before the district court, the district court construed Burton’s

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

arguments as a motion to dismiss for lack of jurisdiction and denied the motion. ROA, Vol. 1 at 38–40. Burton was found guilty after a jury trial. He has timely appealed. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm Burton’s conviction.

I

This case began in May 2019, when Tulsa Police officers responded to a report of a man pointing a firearm at passing cars. ROA, Vol. III at 25. Officers arrived at the scene and found Burton, who “continually repeated a statement regarding his Moorish beliefs during which he reported that his name was Rodney Burton Bey.” *Id.* Burton was carrying a bag, and officers could see the stock of a revolver protruding from the bag. *Id.* After arresting Burton, officers searched the bag and recovered a Colt .357 magnum revolver loaded with six rounds of ammunition. *Id.* At the time of his arrest, Burton had previous convictions for marijuana possession and being a felon in possession of a firearm. ROA, Vol. II at 141–42.

A federal grand jury returned a one-count indictment, charging Burton with being a felon in possession of a firearm and ammunition. ROA, Vol. I at 13–14. Before Burton’s trial, the district court ordered a competency hearing and a psychiatric evaluation. *Id.* at 21–22. Burton was found competent to stand trial. ROA, Vol. II at 5. Burton proceeded pro se after refusing appointment of counsel. However, a federal public defender served as his stand-by counsel throughout trial. ROA, Vol. I at 16. Burton filed several affidavits with the district court, arguing in part that he was not a citizen of the United States and that the court therefore lacked jurisdiction

over him. Burton also alleged that he was not the same person named in the indictment and was instead a third-party intervenor. The district court construed these affidavits as motions to dismiss, to transfer for lack of venue, and to compel production of information. The court denied the motions. *Id.* at 38–41. Burton’s case proceeded to trial, and a jury subsequently found him guilty. *Id.* at 129. Burton was sentenced to a term of imprisonment of 30 months, and a 3-year term of supervised release. *Id.* at 130. After sentencing, Burton filed a motion for reconsideration, which the district court denied. After filing this appeal, we granted Burton’s motion seeking permission to appear pro se and to allow his public defender to withdraw.

II

In his appeal, Burton seeks dismissal of this case and renews several arguments that he made before the district court, namely that he is a “Free Sovereign” who is “eternally in the Jurisdiction of [his] Ancient Moabite Forebeares.” Aplt. Br. at 2–4. Burton further asserts that he is not the Rodney Burton referenced in the indictment, and that Rodney Burton is a “paper construct.” *Id.* at 4. Burton also asserts that the district court erred because “it used the past of the paper construct[’]s prior convictions.” *Id.* Like the district court, we construe these arguments as a motion to dismiss for lack of jurisdiction.

We review a district court’s denial of a motion to dismiss on jurisdictional grounds under a de novo standard of review. *United States v. Tolliver*, 730 F.3d 1216, 1224 (10th Cir. 2013).

We first address Burton’s arguments that the district court lacked jurisdiction over him because he is a Moor American national. Burton was charged with violating federal criminal law while in the United States. The district court’s criminal jurisdiction is based on 18 U.S.C. § 3231, which provides that federal “district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.” Further, the “[l]aws of the United States apply to all persons within its borders.” *United States v. James*, 328 F.3d 953, 954 (7th Cir. 2003). We have held that 18 U.S.C. § 3231 is “the beginning and the end of the jurisdictional inquiry” in cases involving violations of federal criminal law. *United States v. Tony*, 637 F.3d 1153, 1158 (10th Cir. 2011) (quotations omitted).

Burton has offered no evidence to support his assertions that he is not an American citizen, and in other cases we have rejected the argument that a defendant’s alleged status as a sovereign state citizen entitles him to immunity from federal law. *See Lonsdale v. United States*, 919 F.2d 1440, 1448 (10th Cir. 1990) (dismissing defendant’s arguments that federal taxes did not apply because defendants were “free born, white, preamble, sovereign, natural, individual common law ‘de jure’ citizens of a state, etc.” as “lacking in legal merit and patently frivolous”); *see also United States v. Palmer*, 699 Fed. App’x 836, 838 (10th Cir. 2017) (unpublished) (“As for [defendant’s] sovereign state citizen argument, reasonable jurists could also not disagree that the claim is plainly frivolous.”). Accordingly, we reject Burton’s

argument that his Moor nationality removed him from the criminal jurisdiction of the district court.¹

Burton also argues that the district court erred in considering “the past of the paper construct[’]s prior convictions.” Aplt. Br. at 4. Burton renews his claim that he is “not the paper construct capital letter all capital letter Rodney L Burton” named in the indictment. *Id.* Burton has presented no evidence to support the claim that he is not the person named in the indictment. After surveying documents in the trial record, the district court was “satisfied . . . Burton is the person named in the Second Superseding Indictment.” ROA, Vol. I at 38. The pre-sentence investigation report also provided various identifying information confirming Burton’s identity. ROA, Vol. III at 21–23 (including Burton’s photograph, date of birth, social security number, and identifying tattoos). During the trial, a probation officer who was familiar with Burton from his prior convictions identified Burton as the same person who had previously been convicted of being a felon in possession of a firearm. ROA, Vol. II at 141–42. Thus, there was ample evidence to conclude that Burton *is* the same person named in the indictment, and, aside from his own statements, he has presented no evidence to the contrary.

¹ Burton also mentions in his opening brief the “Peace and Friendship Treaty” between Morocco and the United States, but he does not explain how that treaty affects the district court’s criminal jurisdiction in this case. Aplt. Br. at 3. As the government notes, “[n]othing in this treaty supports . . . Burton’s position that . . . he is exempt from criminal prosecution in the United States.” Aple. Br. at 8. We therefore reject Burton’s argument that the treaty provides him with immunity from criminal prosecution in the United States.

Because there was ample evidence to conclude that Burton was the same person who had been previously convicted of various felonies, the district court also did not err in permitting the jury to consider Burton’s prior convictions. During Burton’s trial, the government presented evidence that Burton had previously been found guilty of being a felon in possession of a firearm. *Id.* at 141–42 (presenting testimony from probation officer Michael Woolridge, confirming that Burton had previously been convicted of being a felon in possession of a firearm). The government also introduced evidence that Burton “received a sentence of two years for possession of marijuana” in April 2002, and that that was his second marijuana offense. ROA, Vol. II at 154. As discussed above, Burton’s assertions that the defendant in those cases was a “paper construct” is insufficient justification for the court to exclude evidence of these past convictions. Therefore, the district court did not err in considering proof of these past convictions in determining his criminal history, or in allowing the jury to consider them in determining Burton’s guilt.

III

For the foregoing reasons, we AFFIRM Burton’s conviction.

Entered for the Court

Mary Beck Briscoe
Circuit Judge