

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, <i>Plaintiff-Appellant,</i> v. DANTE KENYON ANDERSON, <i>Defendant-Appellee.</i>

No. 09-50559
D.C. No.
2:08-cr-00121-JSL-1
OPINION

Appeal from the United States District Court
for the Central District of California
J. Spencer Letts, District Judge, Presiding

Submitted November 3, 2010*
Pasadena, California

Filed November 16, 2010

Before: Harry Pregerson, Kenneth F. Ripple,** and
Susan P. Graber, Circuit Judges.

Per Curiam Opinion

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

**The Honorable Kenneth F. Ripple, Senior Judge, United States Court of Appeals for the Seventh Circuit, sitting by designation.

COUNSEL

Sean Kennedy, Federal Public Defender, Michael Tanaka,
Deputy Federal Public Defender, Los Angeles, California, for
the plaintiff-appellant.

André Birotte Jr., United States Attorney, Christine C. Ewell, Assistant United States Attorney, Shawn J. Nelson, Assistant United States Attorney, Los Angeles, California, for the defendant-appellee.

OPINION

PER CURIAM:

The United States appeals the district court's dismissal of Defendant-Appellee Dante Anderson's indictment for being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). The court concluded that the defendant's two predicate felony convictions were insufficient to support a federal indictment because each resulted from a plea of *nolo contendere* in a California state court and, therefore, did not conclusively establish Anderson's guilt.

[1] Title 18 U.S.C. § 922(g)(1) prohibits possession of a firearm by "any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year." "What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held." 18 U.S.C. § 921(a)(20); *accord United States v. Valerio*, 441 F.3d 837, 839 (9th Cir. 2006) ("Under the federal felon in possession statute, state law controls on whether a person has a 'conviction,' . . .").

[2] The California Penal Code, section 1016(3), provides that "[t]he legal effect of [a *nolo contendere*] plea, to a crime punishable as a felony, shall be the same as that of a plea of guilty for all purposes." A plea of *nolo contendere* "is the functional equivalent of a guilty plea." *People v. Whitfield*, 54 Cal. Rptr. 2d 370, 377 (Ct. App. 1996).

[3] The district court's holding was clearly erroneous. Section 922(g)(1) requires only that the defendant was "convicted" of a previous felony, as defined by the jurisdiction in which the proceedings were held. California law treats a plea of nolo contendere as equivalent to a guilty plea. Thus, Anderson's nolo contendere pleas resulted in convictions, and either conviction was sufficient to qualify as a predicate felony.

[4] The district court's dismissal of the indictment under § 922(g)(1) is reversed, and the matter is remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.