(1 of 10)

Case: 15-50192, 06/15/2016, ID: 10015411, DktEntry: 25-1, Page 1 of 5

FILED

NOT FOR PUBLICATION

JUN 15 2016

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

No. 15-50192

Plaintiff - Appellee,

D.C. No. 2:14-cr-00667-RGK-1

v.

MEMORANDUM*

JOHN C. SEARS,

Defendant - Appellant.

Appeal from the United States District Court for the Central District of California R. Gary Klausner, District Judge, Presiding

Argued and Submitted May 2, 2016 Pasadena, California

Before: W. FLETCHER and GOULD, Circuit Judges and LEMELLE,** Senior District Judge.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The Honorable Ivan L.R. Lemelle, Senior District Judge for the U.S. District Court for the Eastern District of Louisiana, sitting by designation.

Defendant-Appellant John Sears appeals the district court's order affirming the magistrate judge's finding that Sears was guilty of violating two National Park Service regulations. We affirm.

1. Sears's actions were not excused by the defense of necessity. In order to prevail on his necessity defense, Sears had to show (among other things) that he broke the law in order to "prevent imminent harm." *United States v. Perdomo-Espana*, 522 F.3d 983, 987 (9th Cir. 2008). Although Sears contends that he would have risked the "life and limb" of both himself and his mules if forced to leave the area where he was sleeping, the evidence undermines Sears's claim that leaving would have been unduly dangerous. Although it was dark, Sears had a flashlight. Furthermore, the path to the equestrian-based campsite was along the administrative road, not some untamed part of the wilderness.

Sears also failed to show that "there were no other legal alternatives to violating the law." *Id.* at 988. Sears had a clear legal alternative: he could have asked the rangers for assistance. The rangers could have accompanied Sears to the equestrian campsite, ensuring that he arrived unharmed. Depending on the equipment they had available, the rangers may have been able to transport Sears and his mules to the equestrian campsite or off national park property. We do

Case: 15-50192, 06/15/2016, ID: 10015411, DktEntry: 25-1, Page 3 of 5

know, based on what happened after Sears's arrest, that the rangers had access to a vehicle capable of transporting Sears's mules.

- Sears's contention that the camping regulation contains a mens rea 2. element also fails. While this Court maintains a "predilection towards reading an intent element into regulations," this proclivity applies only "where the[] [regulation's] language remotely suggested it." United States v. Bibbins, 637 F.3d 1087, 1092 (9th Cir. 2011) (quoting *United States v. Kent*, 945 F.2d 1441, 1446 (9th Cir. 1991)). The regulation at issue here — which prohibits "[c]amping outside of designated sites or areas" — has no such language suggesting a required mental state. The absence of language suggesting a mens rea therefore makes this case more like Kent, 945 F.2d 1441, and United States v. Wilson, 438 F.2d 525 (9th Cir. 1971) (construing National Forest Service regulations as having no mens rea) than Bibbins, 637 F.3d 1087, United States v. Semenza, 835 F.2d 223 (9th Cir. 1987), and *United States v. Launder*, 743 F.2d 686 (9th Cir. 1984) (interpreting National Forest Service regulations as containing a mental state requirement).
- 3. Sears contends that his conviction violates due process, essentially because there are too many federal regulations for him to be expected to know that his conduct was unlawful. It is a longstanding principle of criminal law "that

ignorance of the law is no defense." *United States v. Int'l Minerals & Chem. Corp.*, 402 U.S. 558, 563 (1971).

- 4. Even assuming there is a constitutional right to intrastate travel, the camping regulation at issue here does not violate it. The purpose of the constitutionally protected right to travel is to "protect[] . . . travelers against two sets of burdens: 'the erection of actual barriers to int[ra]state movement' and 'being treated differently' from [other] travelers." *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 277 (1993) (quoting *Zobel v. Williams*, 457 U.S. 55, 60 n.6 (1982)). The camping regulation does not implicate either of these concerns. The regulation only prohibits *camping* outside of designated areas; it does not prohibit traveling through national park areas. Furthermore, the regulation does not discriminate among different types of people, as it applies broadly to anyone who visits national park land.
- 5. Sears's convictions do not violate the Sixth Amendment right to a jury trial. Because the maximum sentence of imprisonment for Sears was six months, his offenses were presumptively petty. *United States v. Nachtigal*, 507 U.S. 1, 3 (1993). Any argument that the additional penalties associated with his offenses are so severe as to transform Sears's convictions into "serious" ones is foreclosed by

Case: 15-50192, 06/15/2016, ID: 10015411, DktEntry: 25-1, Page 5 of 5

Nachitgal, which held that the jury trial right did not apply to an almost identical punishment scheme. 507 U.S. 1.

AFFIRMED.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk

95 Seventh Street San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

• This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

• The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1) Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ► A material point of fact or law was overlooked in the decision;
 - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

• A party should seek en banc rehearing only if one or more of the following grounds exist:

- ► Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ► The proceeding involves a question of exceptional importance; or
- The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

• A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

Case: 15-50192, 06/15/2016, ID: 10015411, DktEntry: 25-2, Page 3 of 5

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

• Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published <u>opinion</u>, please send a letter **in writing** within 10 days to:
 - ► Thomson Reuters; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using "File Correspondence to Court," or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

United States Court of Appeals for the Ninth Circuit

BILL OF COSTS

This form is available as a fillable version at: http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Form%2010%20-%20Bill%20of%20Costs.pdf.

Note: If you wish to fi service, within late bill of costs U.S.C. § 1920, a	4 days of must be a	the date of ccompanie	entry of judd by a moti	dgment, and in a on showing goo	accordance od cause. P	e with 9th lease refe	Circuit Ru	le 39-1. A
		v.				9th	Cir. No.	
The Clerk is reques	ted to tax	the followi	ng costs ag	ainst:	-			
Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1	REQUESTED (Each Column Must Be Completed)				ALLOWED (To Be Completed by the Clerk)			
	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST
Excerpt of Record			\$	\$			\$	\$
Opening Brief			\$	\$			\$	\$
Answering Brief			\$	\$			\$	\$
Reply Brief			\$	\$			\$	\$
Other**			\$	\$			\$	\$

TOTAL: |\$

Attorneys' fees cannot be requested on this form.

TOTAL: |\$

^{*} Costs per page: May not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

^{**} Other: Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

(10 of 10)

Case: 15-50192, 06/15/2016, ID: 10015411, DktEntry: 25-2, Page 5 of 5 Form 10. Bill of Costs - Continued

I, swear under penalty of perjury that the services for which costs are taxed
were actually and necessarily performed, and that the requested costs were actually expended as listed.
Signature
("s/" plus attorney's name if submitted electronically)
Date
Name of Counsel:
Attorney for:
(To Be Completed by the Clerk)
Date Costs are taxed in the amount of \$
Clerk of Court
By: , Deputy Clerk