

FILED

JUN 28 2019

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOE NERSESYAN, AKA Ovsep
Nersesyan,

Defendant-Appellant.

No. 17-10511

D.C. No.
2:16-cr-00108-GEB-1

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, Jr., District Judge, Presiding

Argued and Submitted June 14, 2019
San Francisco, California

Before: SCHROEDER and M. SMITH, Circuit Judges, and RAKOFF,** District
Judge.

Defendant Joe Nersesyan pleaded guilty to unlawfully possessing a machine
gun and was sentenced to 51 months in prison. On appeal, he contests the district
court's application of a higher base offense level under U.S.S.G. § 2K2.1(a)(4)(B)

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

for being a “prohibited person” in possession of a firearm. *See United States v. Purdy*, 264 F.3d 809, 813 (9th Cir. 2001) (explaining that an unlawful drug user is a person who “took drugs with regularity, over an extended period of time, and contemporaneously with his . . . possession of a firearm”). He contends that the record does not establish that he was using drugs at the time of the weapon possession. We affirm.

The record supports the district court’s finding that Nersesyan was both an unlawful drug user and a drug addict when he was charged with possessing a machine gun. This renders him a “prohibited person” within the meaning of the sentencing guidelines. Police officers found Nersesyan’s unlawful machine gun on October 26, 2015, inside a car he had been borrowing for more than two months. In that car, the officers also found methamphetamine and recently used drug paraphernalia that had been within Nersesyan’s reach. About six months later, in May 2016, Nersesyan admitted to probation that he had a history of addiction that led him to a relapse earlier in 2015, and that he was currently taking unprescribed opiates daily. That same month, he tested positive for using methadone. A few weeks after that, he stated in a call from jail that he “needs meth,” “has a problem,” and has “been using heroin.”

Given the evidence of ongoing drug use from 2015 through June 2016, as well as Nersesyan's recurrent issues with drug addiction, there was more than a preponderance of evidence supporting the district court's conclusion that Nersesyan was both an unlawful drug user and a drug addict when he possessed the machine gun. Evidence that he was using drugs at the exact moment he was found with the gun was not required.

AFFIRMED.