FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee*, v. JEREMY RAY WARREN, *Defendant-Appellant.*	No. 20-10213 D.C. Nos. 2:15-cr-00189-KJM-1 2:15-cr-00189-KJM OPINION

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, Chief District Judge, Presiding

Submitted July 7, 2021[*]
San Francisco, California

Filed July 22, 2021

Before: A. Wallace Tashima and Susan P. Graber, Circuit Judges, and Kathryn H. Vratil,[**] District Judge.

Opinion by Judge Graber

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

[**] The Honorable Kathryn H. Vratil, United States District Judge for the District of Kansas, sitting by designation.

SUMMARY[***]

Criminal Law

The panel affirmed a criminal judgment in a case in which the defendant pleaded guilty to a single count contained in a superseding information charging him with conspiracy to engage in sex trafficking of a child "in violation of Title 18, United States Code, Sections 1594(c) and 1591(a)(1), (b)(2)."

Arguing that the judgment and commitment order must be amended to remove the references to §§ 1591(a)(1) and (b)(2), the defendant asserted that the judgment states that he was found guilty of both the conspiracy and the underlying crime that formed the substantive object of the conspiracy. The panel disagreed. The panel wrote that the inclusion of statutory references to both the conspiracy statute and the sections describing the object of the conspiracy does not transform the judgment into one that describes a conviction of the substantive crime. The panel wrote that the judgment, in sum, cannot properly be read to suggest that the defendant was convicted of more than one crime, nor can it properly be read to suggest that the defendant stands convicted of the crime that was the object of the conspiracy.

[***] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

COUNSEL

Michael Tanaka, Los Angeles, California, for Defendant-Appellant.

McGregor W. Scott, United States Attorney; Camil A. Skipper, Appellate Chief; Alexandre M. Dempsey, Assistant United States Attorney; United States Attorney's Office, Fresno, California.

OPINION

GRABER, Circuit Judge:

In a one-count superseding information, the government charged Defendant Jeremy Warren with "VIOLATION: 18 U.S.C. § 1594(C) - CONSPIRACY TO ENGAGE IN SEX TRAFFICKING OF A CHILD IN VIOLATION OF 18 U.S.C. § 1591(A)(1), (B)(2)." Defendant pleaded guilty and the district court sentenced him to 206 months' imprisonment. He timely appeals. Defendant challenges neither the conviction nor the sentence but argues only that the judgment and commitment order must be amended to remove references to the underlying substantive offense, 18 U.S.C. § 1591(a)(1) and (b)(2). We disagree and, therefore, affirm.[1]

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[1] The parties dispute whether we review de novo or for plain error, as Defendant did not seek a change in the judgment at the district court. *United States v. Saavedra-Velazquez*, 578 F.3d 1103, 1106 (9th Cir. 2009). We need not resolve that dispute because the result would be the same under either standard.

In 2013, Defendant discussed with Alyssa Tegan Brulez the prostitution of a minor through the use of a website called Redbook. Defendant knew that the minor was in fact under the age of 18. He also knew that Brulez had encouraged the minor to engage in prostitution and that the purpose of the scheme was to make money for Defendant. There is no evidence that the minor actually engaged in a commercial sex act as a result of the conspiracy.

In 2015, the government indicted Defendant on three counts. Two of the counts charged sex trafficking of a child by force, threats of force, or coercion; the other count charged Defendant and co-defendant Brulez with conspiracy to engage in sex trafficking of a child. Thereafter Defendant entered into an agreement with the government under which he would plead guilty to a single count of conspiracy to engage in sex trafficking of a child in violation of 18 U.S.C. § 1594(c). In turn, the government agreed to dismiss the remaining counts against Defendant.

Accordingly, the superseding information charged Defendant with a single count of conspiracy to engage in sex trafficking of a child "in violation of Title 18, United States Code, Sections 1594(c) and 1591(a)(1), (b)(2)." Title 18 U.S.C. § 1594(c) punishes a person who conspires with another to violate 18 U.S.C. § 1591. Section 1591 pertains to sex trafficking. Subsection 1591(a)(1) applies to a person who "recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits" sex trafficking by any means. Subsection 1591(b)(2) describes the punishment for sex trafficking that is *not* effected by means of force, threats of force, fraud, or coercion and that does *not* involve a child victim under the age of 14.

Defendant pleaded guilty to the single count contained in the superseding information. The government stated that Defendant and another person had agreed "to engage in sex trafficking of a child in violation of Title 18 United States Code Sections 1591(a)(1) and (b)(2)." At one point, the prosecutor explained that Defendant "will plead guilty to the single count in the super[s]eding information which charges a violation of Title 18 United States Code Section 159[4](c), conspiracy to engage in sex trafficking of a child in violation of 18 U.S.C. Section 1591(a)(1) and (b)(2)." As agreed, the government moved to dismiss the remaining counts. The court accepted the guilty plea and adjudged Defendant guilty of the charged offense.

The court later sentenced Defendant to 206 months' imprisonment, dismissed the remaining counts, and entered the following judgment:

THE DEFENDANT:
[✓] pleaded guilty to Count 1 of the Superseding Information.
[ ] 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 this offense:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 1594(c) and 1591 (a)(1) and (b)(2)	Conspiracy to Engage in Sex Trafficking of a Child (Class A Felony)	4/25/2013	1

On appeal, Defendant asserts that the judgment must be "corrected" because it shows that he was convicted of having violated 18 U.S.C. § 1591(a)(1) and (b)(2). That is, he asserts that the judgment states that he was found guilty of both the conspiracy and the underlying crime that formed the substantive object of the conspiracy. That is an incorrect reading of the judgment.

The judgment clearly provides that Defendant pleaded guilty to a single count, "Count 1 of the Superseding

Information"; that Defendant is "adjudicated guilty of *this* offense" in the singular (emphasis added); that "[a]ll remaining Counts are dismissed"; and that the nature of the offense of conviction is "Conspiracy to Engage in Sex Trafficking of a Child (Class A Felony)"—again describing the nature of "the offense" in the singular. The inclusion of statutory references to both the conspiracy statute and the sections describing the object of the conspiracy does not transform the judgment into one that describes a conviction of the substantive crime. The judgment, in sum, cannot properly be read to suggest that Defendant was convicted of more than one crime, nor can it properly be read to suggest that Defendant stands convicted of the crime that was the object of the conspiracy.[2]

It is axiomatic that, to be found guilty of a federal conspiracy, one must agree with at least one other person to commit a substantive federal offense. *United States v. Indelicato*, 800 F.2d 1482, 1483 (9th Cir. 1986) (per curiam). Thus, although the judgment is not required to pinpoint the statute defining the substantive offense that is the object of the conspiracy, neither is it error for the judgment to include such a reference. *See, e.g.*, *United States v. Pariseau*, 685 F.3d 1129, 1129 (9th Cir. 2012) (citing 21 U.S.C. §§ 846 *and* 841 where the defendant was convicted of one count of

[2] Defendant argues that, because of the wording of the judgment, the Bureau of Prisons ("BOP") erroneously concluded that he has a conviction under 18 U.S.C. § 1591, which makes him ineligible for certain benefits and privileges. *See* 18 U.S.C. § 3632(d); *see also* 18 U.S.C. § 3632(d)(4)(D)(xxvii) (inmates ineligible if convicted of "[a]ny offense under Chapter 77, relating to peonage, slavery, and trafficking in persons, except for sections 1593 through 1596"). He now has the opportunity to present to the BOP this opinion, which construes the judgment to reflect that Defendant committed a single offense under 18 U.S.C. § 1594(c).

attempted possession with intent to distribute more than 500 grams of methamphetamine); *United States v. Martinez-Martinez*, 156 F.3d 936, 938 (9th Cir. 1998) (citing 18 U.S.C. §§ 371 *and* 659 where the defendant pleaded guilty to a one-count indictment charging conspiracy to steal goods in foreign commerce).

AFFIRMED.