

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i> v. ROSHAJA LAMONT HARVEY, <i>Defendant-Appellant.</i>
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No. 11-50268
D.C. No.
3:95-cr-02095-
IEG-1
OPINION

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, Chief District Judge, Presiding

Submitted October 11, 2011*
Pasadena, California

Filed November 3, 2011

Before: Ferdinand F. Fernandez and Consuelo M. Callahan,
Circuit Judges, and Robert J. Timlin,** District Judge.

Opinion by Judge Fernandez

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

**The Honorable Robert J. Timlin, Senior United States District Judge for the Central District of California, sitting by designation.

COUNSEL

Jason I. Ser, Federal Defenders of San Diego, Inc., San Diego, California, for the defendant-appellant.

Sara J. O'Connell, Assistant U.S. Attorney, Office of the United States Attorney, San Diego, California, for the plaintiff-appellee.

OPINION

FERNANDEZ, Circuit Judge:

Roshaja Harvey appeals from the district court's order finding him in violation of his conditions of supervised release based upon his use of marijuana. He asserts that because he had a recommendation from a physician to use marijuana in California pursuant to the California Compassionate Use Act of 1996,¹ he did not violate the possession prohibition² of the Federal Controlled Substances Act.³

We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742. We review the district court's decision to revoke a term of supervised release for abuse of discretion. *United States v. Perez*, 526 F.3d 543, 547 (9th Cir. 2008). However, we review questions of statutory interpretation de novo. *See United States v. Cade*, 236 F.3d 463, 465 (9th Cir. 2000).

[1] We affirm the district court for the reasons stated in its precise and accurate decision dated June 23, 2011,⁴ which we adopt as our own, with one addition. The addition is: Whatever else "order" might mean under § 844(a) of the Controlled Substances Act, it does not include a mere recommendation from a physician pursuant to the Compassionate Use Act.

AFFIRMED.

¹Cal. Health & Safety Code § 11362.5.

²21 U.S.C. § 844(a).

³21 U.S.C. §§ 801-904.

⁴*United States v. Harvey*, ___ F. Supp. 2d ___, 2011 WL 2493744 (S.D. Cal. June 23, 2011).