

FILED

MAR 03 2017

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NOT FOR PUBLICATION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.

MALIA ARCIERO,

Defendant-Appellant.

No. 15-10479

D.C. No.

1:13-cr-01036-SOM-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Susan Oki Mollway, District Judge, Presiding

Submitted February 24, 2017**
Honolulu, Hawaii

Before: **KOZINSKI, HAWKINS** and **BEA**, Circuit Judges.

1. A court may consider prejudice to the government when determining whether to sever a joint trial. Fed. R. Crim. P. 14(a) (“If the joinder of . . . defendants . . . appears to prejudice a defendant or the government, the court may .

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

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

. . sever the defendants' trials"). The court did not abuse its discretion in severing the trials so that defendants' mutually inculpatory statements could be admitted while avoiding a Confrontation Clause problem. See Bruton v. United States, 391 U.S. 123, 126 (1968).

2. The special conditions of Arciero's supervised release are not plainly erroneous. See Fed. R. Crim. P. 52(b). When imposing the sentence, the court properly considered Arciero's mental health history and drug and alcohol abuse. See United States v. Sales, 476 F.3d 732, 735–36 (9th Cir. 2007). Special condition number 2 is mandatory; it delegates to the probation office's discretion only the details of mental health treatment. We have approved this practice. See United States v. Stephens, 424 F.3d 876, 880–84 (9th Cir. 2005). Special condition number 4 is neither vague nor overbroad, and it is reasonably related to rehabilitative goals. See United States v. Goddard, 537 F.3d 1087, 1089 (9th Cir. 2008) (citing 18 U.S.C. §§ 3583(d), 3553(a)).

AFFIRMED.