

MAR 14 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NOT FOR PUBLICATION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.

ROBERT STEVEN McINTEE,

Defendant-Appellant.

No. 16-30129

D.C. No. 2:02-cr-00009-DWM

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted March 8, 2017**

Before: LEAVY, W. FLETCHER, and OWENS, Circuit Judges.

Robert Steven McIntee appeals from the district court's order modifying his conditions of supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* 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). McIntee's request for oral argument, set forth in his reply brief, is accordingly denied.

McIntee challenges the district court's modification of his conditions of supervised release to increase the maximum number of non-treatment drug tests to which McIntee may be subjected on an annual basis. The district court did not abuse its discretion. *See United States v. Bainbridge*, 746 F.3d 943, 946 (9th Cir. 2014). In light of the nature of McIntee's offense and history of substance abuse while not incarcerated, the modified condition is reasonably related to deterrence and involves no greater deprivation of liberty than is reasonably necessary. *See* 18 U.S.C. § 3583(d), (e)(2); *see also United States v. Garcia*, 522 F.3d 855, 861 (9th Cir. 2007) (recognizing authority of district court to modify conditions of supervised release to increase number of drug tests to which defendant is subject).

AFFIRMED.