

APR 22 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KENNETH HENRY McDONALD, Jr.,

Defendant - Appellant.

No. 12-10412

D.C. No. 1:07-cr-00049-AWI

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Anthony W. Ishii, District Judge, Presiding

Submitted April 16, 2013\*\*

Before: CANBY, IKUTA, and WATFORD, Circuit Judges.

Kenneth Henry McDonald, Jr. appeals from the district court’s revocation of supervised release and the nine-month sentence imposed upon revocation. We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

McDonald contends, and the government agrees, that the district court improperly delegated judicial authority by construing Standard Condition 3 to permit the probation officer to prohibit McDonald from possessing certain types of cell phones and images of minors. A district court may only “delegate to the probation officer the details of where and when the condition will be satisfied.” *United States v. Stephens*, 424 F.3d 876, 880 (9th Cir. 2005). Here, construing Standard Condition 3 to allow the probation officer to impose new substantive conditions was an improper delegation regarding the “primary decision” of what supervised release conditions should be imposed. *See id.* at 882. Accordingly, we vacate the judgment and remand for resentencing solely on the basis of McDonald’s violation of Special Condition 8.

**VACATED and REMANDED.**