

DEC 31 2012

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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NOT FOR PUBLICATION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.

MARK STEVEN ELK SHOULDER,

Defendant - Appellant.

No. 12-30168

D.C. No. 1:09-cr-00023-RFC

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Richard F. Cebull, Chief Judge, Presiding

Submitted December 19, 2012**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Mark Stevens Elk Shoulder appeals from the district court's judgment revoking his 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 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).

Elk Shoulder contends that the district court abused its discretion when it revoked his supervised release for violating the condition of supervised release prohibiting him from being in the company of a child under the age of 18.

Contrary to Elk Shoulder's contention, the record supports the conclusion that his contact with the child was not incidental or unknowing. The district court did not abuse its discretion in finding by a preponderance of the evidence that Elk Shoulder violated a condition of his supervised release. *See United States v. Perez*, 526 F.3d 543, 547 (9th Cir. 2008).

AFFIRMED.