

JAN 27 2009

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NOT FOR PUBLICATION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.

LUTHER GENE RAY, Jr., a/k/a Pumpkin,
a/k/a Romello, a/k/a Daddy, a/k/a Young
Mac,

Defendant - Appellant.

No. 07-50298

D.C. No. CR-04-01589-ER

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Edward Rafeedie, District Judge, Presiding

Submitted January 20, 2009**

Before: O'SCANNLAIN, SILVERMAN and BYBEE, Circuit Judges.

This is a criminal appeal challenging the district court's imposition of a
mental health condition of supervised release.

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

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

A review of the record and the opening brief demonstrates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). Appellant argues that the oral pronouncement of sentence erroneously delegated the authority to impose mental health treatment as a condition of appellant's supervised release. *See Appellant's Opening Brief*, p. 7. However, the district court's written judgment and commitment order corrected this error. *See Appellant's Excerpts of Record*, Vol. I, p. 12; *Appellant's Opening Brief* p. 10, n.2. No other error is alleged on appeal. *See Appellant's Opening Brief* p. 1. As such, the correction supersedes the erroneous oral sentence. *See Fed. R. of Crim. Proc.* 35; *United States v. Colace*, 126 F.3d 1229 (9th Cir. 1997).

Accordingly, we summarily affirm the district court, and instruct that the district court's written Judgment and Commitment Order should control appellant-defendant's sentence.

AFFIRMED.