

MAR 30 2009

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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NOT FOR PUBLICATION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.

FANGIO STANLEY MONFORT,

Defendant - Appellant.

No. 07-50219

D.C. No. CR-06-00366-GPS

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
George P. Schiavelli, District Judge, Presiding

Submitted March 18, 2009\*\*

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Fangio Stanley Monfort appeals from certain special conditions of supervised release imposed following his guilty-plea conviction for possession of

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

child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B). We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm in part, and vacate and remand in part.

Monfort's challenges to the requirement under Condition 5 that he submit to polygraph and Abel testing, and to the limited waiver of confidentiality required pursuant to Condition 6, are foreclosed. *See United States v. Stoterau*, 524 F.3d 988, 1003-07, 1011 (9th Cir. 2008). Monfort's challenge to the requirement under Condition 7 that he pay treatment costs as directed by the probation officer is also foreclosed. *See United States v. Soltero*, 510 F.3d 858, 864 (9th Cir. 2007) (*per curiam*).

Monfort challenges Conditions 11, 13, and 14, restricting his interaction with children, and Conditions 18, 19, and 20, restricting his use of computers and internet-capable devices. We conclude that the district court did not abuse its discretion by imposing these conditions. *See Stoterau*, 524 F.3d at 1008; *United States v. Rearden*, 349 F.3d 608, 620-21 (9th Cir. 2003); *United States v. Guagliardo*, 278 F.3d 868, 872 (9th Cir. 2002).

We recently held that a condition authorizing the probation officer to determine whether a defendant must participate in inpatient treatment impermissibly delegated the district court's judicial authority to require such

treatment. *See United States v. Esparza*, 552 F.3d 1088, 1091 n.5 (9th Cir. 2009).

Because the district court did not have the benefit of *Esparza* when it sentenced Monfort, we vacate this provision of Condition 5 and remand for the district court to determine whether to require mandatory inpatient treatment as a condition of supervised release.

**AFFIRMED in part, VACATED in part, and REMANDED.**