

JUN 22 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>KEVIN BROOKS McCLINTON,</p> <p>Defendant - Appellant.</p>
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No. 08-30329

D.C. No. 3:03-CR-00496-JAR

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Oregon  
James A. Redden, District Judge, Presiding

Submitted June 16, 2009\*\*

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Kevin Brooks McClinton appeals the 180-month sentence and five-year term of supervised release imposed upon resentencing following the partial grant of his 28 U.S.C. § 2255 motion. We have jurisdiction pursuant to 28 U.S.C. § 1291, and

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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).

we affirm.

McClinton contends that the district court lacked jurisdiction to conduct a new sentencing hearing and increase his sentence by adding a five-year term of supervised release. This contention lacks merit. *See* 28 U.S.C. § 2255; *see also United States v. Hock*, 172 F.3d 676, 680-81 (9th Cir. 1999) (stating that the district court has authority to resentence a defendant following a successful § 2255 motion).

McClinton also contends that his due process rights were violated because the district court punished him with a more severe sentence without stating its reasons for doing so on the record. There is no showing of judicial vindictiveness because the record reflects that the district court included a five-year term of supervised release as part of the original judgment that was vacated by the partial grant of McClinton's § 2255 motion. *See United States v. Hagler*, 709 F.2d 578, 579 (9th Cir. 1983).

**AFFIRMED.**