

DEC 14 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NOT FOR PUBLICATION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>OLIVER HILSEN RATH,</p> <p>Defendant - Appellant.</p>
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No. 08-10303

D.C. No. 3:03-cr-00213-WHA

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
William H. Alsup, District Judge, Presiding

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Oliver Hilsenrath appeals pro se from the district court’s order denying his motion to modify the conditions of his probation. We have jurisdiction pursuant to 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 finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Hilsenrath contends that the district court erred by denying his motion to modify the condition of probation which requires him to provide a DNA sample because it violates his rights under the Religious Freedom Restoration Act of 1993. This contention fails because Hilsenrath is not permitted to use such a motion as a backdoor challenge to the legality of the condition. *See United States v. Gross*, 307 F.3d 1043, 1044 (9th Cir. 2002).

Because we affirm on another basis, we decline to address the government's contention that this appeal is barred by a valid appeal waiver.

AFFIRMED.