

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 23 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL F. SCHULZE,

Defendant - Appellant.

No. 08-10468

D.C. No. 1:02-CR-00090-DAE

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
David A. Ezra, District Judge, Presiding

Submitted December 15, 2009**

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

Michael F. Schulze appeals pro se from the district court's orders:

(1) denying his motion to modify a \$50,000 fine; and (2) denying his motion for

* 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).

reconsideration. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Schulze contends that the doctrines of res judicata and collateral estoppel precluded the district court from denying his motion to modify the fine. This contention lacks merit. *See United States v. Bhatia*, 545 F.3d 757, 759 (9th Cir. 2008) (explaining that the doctrines apply only when there is a final judgment).

Schulze also contends that the district court erred when it determined that he had the ability to pay the remaining balance of the fine. The district court did not clearly err because the record contains sufficient evidence that Schulze owns a 1995 Chevrolet pick-up truck that may be sold to satisfy the fine. *See United States v. Orlando*, 553 F.3d 1235, 1240 (9th Cir. 2009); *United States v. Ladum*, 141 F.3d 1328, 1344 (9th Cir. 1998). The district court properly denied Schulze's motion for reconsideration for the same reason.

Finally, Schulze requests that we review the evidence de novo to determine whether he has the ability to pay the fine. De novo review does not apply in this context. *See, e.g., Orlando*, 553 F.3d at 1240.

AFFIRMED.