

APR 21 2010

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NOT FOR PUBLICATION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.

ASTARTE DAVIS-RICE,

Defendant - Appellant.

No. 09-10277

D.C. No. 4:02-cr-40212-DLJ

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
D. Lowell Jensen, District Judge, Presiding

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

Astarte Davis-Rice appeals pro se from the district court's order denying her petition for early termination of supervised release pursuant to 18 U.S.C.

§ 3583(e). 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Davis-Rice contends that the district court erred by determining that early termination of supervised release was unwarranted. We disagree. The district court properly acted within its discretion by relying upon the recommendation of the Probation Officer that Davis-Rice's conduct during supervised release was not so exceptionally good as to warrant early termination. *See United States v. Miller*, 205 F.3d 1098, 1101 (9th Cir. 2000); *United States v. Weber*, 451 F.3d 552, 557 (9th Cir. 2006) (explaining that a district court has "significant discretion" in its decisions concerning supervised release).

We decline to consider facts and arguments raised by Davis-Rice for the first time on appeal. *See United States v. Cade*, 236 F.3d 463, 467 (9th Cir. 2000).

AFFIRMED.