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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NOT FOR PUBLICATION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 style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>ROBERT ANDERSON,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 10-50146

D.C. No. 2:00-cr-01079-ABC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Audrey B. Collins, Chief Judge, Presiding

Submitted June 29, 2010**

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

Robert Anderson appeals from the district court’s judgment revoking his supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Anderson contends that the evidence was insufficient to support the district court’s determination that he violated a condition of his supervised release

* 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).

requiring him to abstain from abusing alcohol. The record reflects that the district court properly concluded, by a preponderance of the evidence, that Anderson violated this condition. *See* 18 U.S.C. § 3583(e)(3); *see also United States v. Perez*, 526 F.3d 543, 547 (9th Cir. 2008) (noting that in order to satisfy the preponderance standard, there must be credible evidence that the releasee violated the terms of supervised release).

Anderson's due process claim is unpersuasive as there is no indication that the district court retroactively modified the "abuse" condition to prohibit all alcohol use. *See United States v. Vega*, 545 F.3d 743, 750 (9th Cir. 2008) (requiring this court to examine the findings to insure that a defendant's due process right to notice of prohibited conduct has been observed to protect him from unknowing violations).

Anderson's motion to clarify this court's previous order granting expedited briefing is denied.

AFFIRMED.