

SEP 03 2010

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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NOT FOR PUBLICATION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>JOHN DE HERRERA,</p> <p>Defendant - Appellant.</p>

No. 09-50527

D.C. No. 2:08-cr-01085-CBM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Consuelo B. Marshall, District Judge, Presiding

Submitted August 23, 2010**

Before: LEAVY, HAWKINS, and THOMAS, Circuit Judges.

John De Herrera appeals pro se from the bench-trial conviction and 24-month unsupervised probationary sentence imposed for committing the misdemeanor offenses of: (1) commemorative installation of a structure in a federal park area without authorization; and (2) tampering with property in a

* 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).

federal park, in violation of 36 C.F.R. §§ 2.62(a) and 2.31(a)(2).

De Herrera admits to committing the offenses, but contends that the conviction should be set aside based on his defense of necessity. The district court correctly concluded that there was no evidence to support De Herrera's necessity defense. Accordingly, this contention lacks merit. *See United States v. Perdomo-Espana*, 522 F.3d 983, 987 (9th Cir. 2008).

AFFIRMED.