

SEP 30 2011

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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NOT FOR PUBLICATION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>STEVEN RITCHARD SCOTT,</p> <p style="text-align: center;">Defendant - Appellant.</p>
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No. 10-30220

D.C. No. 4:07-cr-00134-SEH

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Montana  
Sam E. Haddon, District Judge, Presiding

Submitted September 27, 2011\*\*

Before: HAWKINS, SILVERMAN, and W. FLETCHER, Circuit Judges.

Steven Ritchard Scott appeals from the aggregate 61-month sentence imposed upon re-sentencing following a successful 28 U.S.C. § 2255 motion.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Scott’s counsel has filed a brief stating there are no grounds for relief, along with a motion to withdraw as

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\* 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).

counsel of record. Scott filed a pro se supplemental brief, contending that the district court erred in calculating his criminal history category and, by extension, the applicable advisory guidelines range.

Contrary to Scott's contention, the record reflects that the district court correctly calculated two criminal history points under U.S.S.G. § 4A1.1(b) for Scott's 2002 forgery conviction for which the state court imposed a sentence of 90 days imprisonment. *See United States v. Schomburg*, 929 F.2d 505, 507 (9th Cir. 1991). Moreover, our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80-81 (1988), discloses no arguable grounds for relief on direct appeal.

Scott's urgent motion to expedite the case is denied as moot.

Counsel's motion to withdraw is **GRANTED**.

**AFFIRMED.**