

JAN 19 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT YBARRA,

Petitioner - Appellant,

v.

DENNIS SMITH, Warden, FCI-Phoenix,

Respondent - Appellee.

No. 11-15874

D.C. No. 2:09-cv-01447-DGC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David G. Campbell, District Judge, Presiding

Submitted January 17, 2012**

Before: LEAVY, TALLMAN, and CALLAHAN, Circuit Judges.

Robert Ybarra appeals pro se from the district court's denial of his motion for contempt and for reconsideration. We have jurisdiction under 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).

Ybarra contends the district court abused its discretion by denying the motion because the Bureau of Prisons (“BOP”) violated the district court’s December 21, 2010, order to stop collecting restitution payments through the Inmate Financial Responsibility Program (“IFRP”).

We review the denial of a motion for contempt for abuse of discretion. *Balla v. Idaho State Bd. of Corr.*, 869 F.2d 461, 464 (9th Cir. 1989). The record shows that the BOP began collecting restitution payments again after Ybarra voluntarily entered into a contract and agreed to participate in the IFRP. Accordingly, the district court did not abuse its discretion by denying the motion for contempt. *See United States v. Lemoine*, 546 F.3d 1042, 1048 (9th Cir. 2008) (“[N]othing in the text of the statute or our prior decisions places any limits on the BOP’s operation of an independent program, such as the IFRP, that encourages inmates voluntarily to make more generous restitution payments than mandated in their respective judgments.”).

AFFIRMED.