

APR 22 2013

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NOT FOR PUBLICATION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.

KENNETH HENRY McDONALD, Jr.,

Defendant - Appellant.

No. 12-10412

D.C. No. 1:07-cr-00049-AWI

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, District Judge, Presiding

Submitted April 16, 2013**

Before: CANBY, IKUTA, and WATFORD, Circuit Judges.

Kenneth Henry McDonald, Jr. appeals from the district court’s revocation of supervised release and the nine-month sentence imposed upon revocation. We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand.

* 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).

McDonald contends, and the government agrees, that the district court improperly delegated judicial authority by construing Standard Condition 3 to permit the probation officer to prohibit McDonald from possessing certain types of cell phones and images of minors. A district court may only “delegate to the probation officer the details of where and when the condition will be satisfied.” *United States v. Stephens*, 424 F.3d 876, 880 (9th Cir. 2005). Here, construing Standard Condition 3 to allow the probation officer to impose new substantive conditions was an improper delegation regarding the “primary decision” of what supervised release conditions should be imposed. *See id.* at 882. Accordingly, we vacate the judgment and remand for resentencing solely on the basis of McDonald’s violation of Special Condition 8.

VACATED and REMANDED.