

AUG 02 2013

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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NOT FOR PUBLICATION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>LADEL BAPTISTE HARRISON,</p> <p>Defendant - Appellant.</p>

No. 12-30334

D.C. No. 2:03-cr-00016-RHW

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Robert H. Whaley, District Judge, Presiding

Submitted July 24, 2013**

Before: ALARCÓN, CLIFTON, and CALLAHAN, Circuit Judges.

Ladel Baptiste Harrison appeals pro se from the district court’s orders denying his motion for DNA testing and his motion to stay proceedings. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Harrison contends that he is entitled to DNA testing of a firearm,

* 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).

ammunition, and keys under the Innocence Protection Act, 18 U.S.C. § 3600. The district court properly denied the motion because Harrison does not satisfy the statute's requirements. Based on the record, including Harrison's own statements regarding his possession of the firearm, Harrison has not identified a theory of defense that would establish his actual innocence or shown how the proposed DNA testing would produce new material evidence raising a reasonable probability that he did not commit the offense of being a felon in possession of a firearm. *See* 18 U.S.C. § 3600(a)(6), (8).

The district court did not abuse its discretion in denying Harrison's motion to stay the proceeding. Harrison's contention that the district court judge was biased is unpersuasive. We decline to reach Harrison's remaining claims because they are not properly before the court.

AFFIRMED.