

OCT 02 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NOT FOR PUBLICATION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.

GRADY EWING MAYS,

Defendant - Appellant.

Nos. 12-30224

12-30349

D.C. Nos. 1:03-cr-00016-JDS

1:12-cr-00001-RFC

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Montana

Jack D. Shanstrom, District Judge, Presiding

Richard F. Cebull, District Judge, Presiding

Submitted September 24, 2013\*\*

Before: RAWLINSON, N.R. SMITH, and CHRISTEN, Circuit Judges.

In these consolidated appeals, Grady Ewing Mays appeals from the district court's judgment revoking supervised release and the 120-month sentence imposed following his guilty-plea conviction for failure to register as a sex offender, in

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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).

violation of 18 U.S.C. § 2250. We have jurisdiction under 28 U.S.C. § 1291. In Appeal No. 12-30224, we vacate the district court's judgment. In Appeal No. 12-30349, we vacate Mays's sentence and remand for resentencing.

The parties agree that the district court lacked jurisdiction to reinstate Mays's supervised release term in 2011. The parties further agree that the court was therefore without authority to revoke Mays's supervised release, and that Mays was not under a criminal justice sentence when he failed to register as a sex offender. We accordingly vacate the judgment revoking Mays's supervised release. We also vacate the sentence imposed upon Mays's conviction for failure to register and remand for resentencing. Upon remand, the district court shall recalculate the Guidelines range without assessing Mays two points under U.S.S.G. § 4A1.1(d).

In light of our decision, we decline to reach Mays's other arguments.

**Appeal No. 12-30224 VACATED.**

**Appeal No. 12-30349 VACATED and REMANDED for resentencing.**