

MAR 21 2016

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BOBBY RODRIGUEZ,

Defendant - Appellant.

No. 15-50545

D.C. No. 3:04-cr-03002-DMS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted March 15, 2016**

Before: GOODWIN, LEAVY, and CHRISTEN, Circuit Judges.

Bobby Rodriguez appeals from the nine-month sentence imposed upon his third revocation of supervised release. 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).

Rodriguez contends that the district court impermissibly delegated its judicial authority when it rejected his request for outpatient drug treatment and deferred to the probation officer's recommendation that Rodriguez either serve a short sentence followed by inpatient drug treatment or a longer terminal sentence. The case upon which Rodriguez relies, *United States v. Esparza*, 552 F.3d 1088 (9th Cir. 2009), is inapposite. Unlike in that case, the district court here did not impose a condition of supervised release granting the probation officer the authority to decide whether Rodriguez would participate in inpatient or outpatient drug treatment. Rather, the record shows that the court simply listened to the parties' arguments, found probation's recommendation against outpatient treatment persuasive, and imposed a terminal sentence in light of Rodriguez's unwillingness to participate in inpatient treatment. The district court did not err.

AFFIRMED.