

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 29 2016

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRIAN PAUL COSSEY,

Defendant - Appellant.

No. 15-30191

D.C. No. 9:09-cr-00009-DWM

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Montana  
Donald W. Molloy, District Judge, Presiding

Submitted April 26, 2016\*\*

Before: McKEOWN, WARDLAW, and PAEZ, Circuit Judges.

Brian Paul Cossey appeals from the district court's judgment and challenges a special condition of supervised release imposed upon revocation of supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand.

Cossey contends that the district court abused its discretion by imposing a

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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).

condition of supervised release that prohibits him from acquiring, possessing, or viewing materials that depict “sexually explicit conduct,” as defined in 18 U.S.C. § 2256(2)(A), and deemed inappropriate by Cossey’s probation officer and sex offender treatment provider. We have approved a number of conditions related to sex offenders. However, consistent with our sister circuits, we recently held that a condition that extends to non-pornographic materials involving adults deprives a defendant of more liberty than is reasonably necessary. *See United States v. Gnirke*, 775 F.3d 1155, 1165-66 (9th Cir. 2015). We, therefore, vacate the condition as written and remand for the district court to reimpose the condition consistent with *Gnirke*. *See id.* at 1166.

**VACATED and REMANDED.**