

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i> v. MARCEL DARON KING, <i>Defendant-Appellant.</i>
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No. 11-10182
D.C. No.
3:10-cr-00455-
WHA-1
OPINION

Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding

Submitted June 20, 2012*
San Francisco, California

Filed August 1, 2012

Before: Alex Kozinski, Chief Judge, Harry Pregerson,
Diarmuid F. O'Scannlain, Sidney R. Thomas,
William A. Fletcher, Richard A. Paez, Marsha S. Berzon,
Richard R. Clifton, Consuelo M. Callahan, Sandra S. Ikuta
and N. Randy Smith, Circuit Judges.

Per Curiam Opinion

*The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 35; 9th Cir. R. 35-1 to 35-3 advisory committee's note.

COUNSEL

Barry J. Portman, Federal Public Defender, Daniel P. Blank, Assistant Federal Pubic Defender, San Francisco, California, for the appellant.

Melinda Haag, United States Attorney, Barbara J. Valliere, Chief, Appellate Division, Assistant United States Attorney, Suzanne B. Miles, Assistant United States Attorney, San Francisco, California, for the appellee.

OPINION

PER CURIAM:

[1] We overrule *Motley v. Parks*, 432 F.3d 1072 (9th Cir. 2005), the precedent on which it relies, *Moreno v. Baca*, 400 F.3d 1152 (9th Cir. 2005), and *United States v. Harper*, 928 F.2d 894 (9th Cir. 1991), and later cases that rely on it,

including *United States v. Baker*, 658 F.3d 1050 (9th Cir. 2011), *Sanchez v. Canales*, 574 F.3d 1169 (9th Cir. 2009), and *United States v. Lopez*, 474 F.3d 1208 (9th Cir. 2007), to the extent they hold that “there is no constitutional difference between probation and parole for purposes of the fourth amendment.” *Motley*, 432 F.3d at 1083 n.9 (internal quotation marks omitted). These cases conflict with the Supreme Court’s holding that “parolees have fewer expectations of privacy than probationers.” *Samson v. California*, 547 U.S. 843, 850 (2006).

United States v. King, 672 F.3d 1133 (9th Cir. 2012), is vacated, and the case is referred to the original panel for disposition consistent with this opinion.