

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-4701

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DWAYNE SIMMONS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Raymond A. Jackson, District Judge. (4:08-cr-00018-RAJ-1)

Submitted: February 25, 2010

Decided: March 17, 2010

Before GREGORY and AGEE, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Mark H. Bodner, Fairfax, Virginia, for Appellant. Dana James Boente, Assistant United States Attorney, Alexandria, Virginia, Scott W. Putney, Assistant United States Attorney, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dwayne Simmons appeals a district court's order finding he violated the conditions of probation and modifying said conditions. Simmons' counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), stating there were no meritorious arguments for review, but raising for the court's consideration whether the district court erred in finding Simmons' violations were intentional and whether the court erred in imposing a six-month period of home confinement. Simmons was notified of the opportunity to file a pro se supplemental brief, but did not do so. The Government did not file a brief.

If a defendant violates a condition of probation, the district court, after a hearing, may modify the terms of probation at any point prior to the expiration or termination of probation. 18 U.S.C. § 3565(a) (2006); 18 U.S.C.A. § 3563(c) (West 2000 & Supp. 2009). The modifications are reviewed for abuse of discretion. See United States v. Johnson, 892 F.2d 369, 371-72 (4th Cir. 1989). The court must be reasonably satisfied that the defendant violated a condition of probation. United States v. Cates, 402 F.2d 473, 474 (4th Cir. 1968). Under 18 U.S.C.A. § 3563(b), a court may, among other modifications, order a defendant to make restitution, to be employed and to remain at home except for work hours and that

such compliance may be monitored with an electronic monitoring device.

We find no error in the district court's finding that Simmons violated his probation. We also find the court did not abuse its discretion in modifying the conditions of probation. In accordance with Anders, we have reviewed the entire record for any meritorious issues and have found none. Therefore, we affirm the district court's order. We deny without prejudice counsel's motion to withdraw. This court requires counsel inform Simmons, in writing, of the right to petition the Supreme Court of the United States for further review. If Simmons requests that a petition be filed, but counsel believes such a petition would be frivolous, then counsel may renew his motion for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on Simmons. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED