

AUG 18 2008

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NOT FOR PUBLICATION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.

MICHAEL LEE STOCKTON,

Defendant - Appellant.

No. 07-30400

D.C. No. CR-04-00128-RHW

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Robert H. Whaley, District Judge, Presiding

Submitted August 11, 2008**

Before: CANBY, LEAVY, and KLEINFELD, Circuit Judges.

This is an appeal from a re-sentencing judgment entered by the district court against defendant-appellant Michael Lee Stockton after remand from this Court.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Specifically, this court previously affirmed appellant's convictions, but remanded for re-sentencing, holding that it could not discern from the record whether the district court had fully considered the issues presented by a psychiatric evaluation of the defendant. *See United States v. Stockton*, 219 Fed. Appx. 660 (9th Cir. 2007). The district court conducted a second sentencing hearing, at which it took testimony from a clinical psychologist regarding the psychologist's examination of the appellant, and re-sentenced appellant. This appeal followed.

Counsel for the appellant has filed an opening brief pursuant to *Anders v. California*, 368 U.S. 738 (1967) and represents that no non-frivolous issues are presented by this appeal.

A review of the record and the opening brief indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

Accordingly, appellee's unopposed motion for summary affirmance is granted. Counsel Terence M. Ryan, Esq.'s motion to be relieved as counsel for the appellant is granted.

All other pending motions are denied as moot.

AFFIRMED.