NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 10 2008

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

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. ROBIN CHARLES GREEN, Defendant - Appellant.	No. 08-30166 D.C. No. 2:05-cr-00033-LRS MEMORANDUM[*]

Appeal from the United States District Court
for the Eastern District of Washington
Lonny R. Suko, District Judge, Presiding

Submitted December 1, 2008[**]

Before: GOODWIN, CLIFTON and BEA, Circuit Judges.

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

---

[*] 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).

AM/MOATT

standard). Appellant argues that the rule in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), is violated by the imposition of punishment upon revocation of supervised release. Appellant contends such punishment exceeds the maximum authorized by his original conviction, and that because a judge makes findings based on the preponderance of evidence, as opposed to adjudication by a jury beyond a reasonable doubt, it violates *Apprendi*. This argument, however, is foreclosed by *United States v. Huerta Pimental*, 445 F.3d 1220 (9th Cir. 2006) (holding that "[b]ecause release is imposed as part of the sentence authorized by the fact of conviction and requires no judicial fact-finding, it does not violate the Sixth Amendment principles recognized by Apprendi and Blakely").

Accordingly, we summarily affirm the district court's judgment.

AFFIRMED.