

FEB 26 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>SHANNON KINDELAY,</p> <p style="text-align: center;">Defendant - Appellant.</p>
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No. 07-10435

D.C. No. CR-05-00271-NVW

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Neil V. Wake, District Judge, Presiding

Submitted February 18, 2009**

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Shannon Kindelay appeals from the restitution order imposed upon remand following her guilty-plea conviction for involuntary manslaughter, in violation of

* 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).

18 U.S.C. § 1112, and assault resulting in serious bodily injury, in violation of 18 U.S.C. § 113(a)(6). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

The government contends that Kindelay waived her right to appeal the restitution order. We reject the government's contention and address the merits of Kindelay's claims. *See United States v. Gordon*, 393 F.3d 1044, 1050 (9th Cir. 2004).

Kindelay contends that the district court abused its discretion by failing to consider her financial resources and earning ability in determining the amount of restitution to be paid. This contention is belied by the record.

Kindelay also contends that the district court abused its discretion when it determined that she has the ability to pay \$68,367.83 in restitution. We conclude that the district court did not clearly err because there is "some evidence" that Kindelay may be able to pay restitution in the amount ordered in the future. *See United States v. Ramilo*, 986 F.2d 333, 336 (9th Cir. 1993); *see also United States v. Pizzichiello*, 272 F.3d 1232, 1240 (9th Cir. 2001).

AFFIRMED.