

JAN 15 2009

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NOT FOR PUBLICATION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.

JABIN ALLEN WHITLOW,

Defendant - Appellant.

No. 06-30098

D.C. No. CR-02-00079-22-BLW

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JABIN ALLEN WHITLOW,

Defendant - Appellant.

No. 06-30101

D.C. No. CR-02-00185-01-BLW

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, District Judge, Presiding

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

Submitted December 17, 2008 **

Before: WALLACE, TROTT and RYMER, Circuit Judges.

In these consolidated appeals, Jabin Allen Whitlow appeals from the 300-month sentence imposed by the district court after we reversed his conspiracy conviction and remanded to the district court for resentencing. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

Whitlow contends that the district court erred by overemphasizing the Guidelines range and by failing to consider whether his career offender status created an unwarranted sentence disparity based on the “low-level” nature of his prior convictions. Reviewing for plain error or otherwise, we conclude that the district court did not procedurally err. *See United States v. Dallman*, 533 F.3d 755, 761 (9th Cir. 2008); *United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc). We further conclude that the sentence is substantively reasonable. *See Carty*, 520 F.3d at 993.

AFFIRMED.

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