

MAR 02 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NOT FOR PUBLICATION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.

GREGORY CODY HERNDON,

Defendant - Appellant.

No. 08-30145

D.C. No. 4:07-cr-00088-SEH

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted February 18, 2009**

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

Gregory Cody Herndon appeals from the 108-month sentence imposed following his guilty-plea conviction for possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B). We have jurisdiction under 28 U.S.C.

* 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).

§ 1291 and we affirm.

Herndon contends that his sentence is unreasonable because it is greater than necessary, the district court gave undue weight to the nature of his offense and overlooked other mitigating factors, and the district court did not adequately explain the sentence. We conclude that the district court did not commit procedural error, and that Herndon's sentence is substantively reasonable. *See United States v. Carty*, 520 F.3d 984, 994-95 (9th Cir. 2008) (en banc).

AFFIRMED.