

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

MAR 06 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WILLIAM BLAKE CALDWELL,

Defendant - Appellant.

No. 07-50317

D.C. No. CR-06-00331-DSF-1

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Dale S. Fischer, District Judge, Presiding

Argued and Submitted July 16, 2008  
Pasadena, California

Before: FERNANDEZ, RYMER and KLEINFELD, Circuit Judges.

William Blake Caldwell appeals his above-Guidelines sentence. We affirm.

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

The above-guidelines sentence is both a departure and a variance, because it was both justified “under the framework set out in the Guidelines” and “justified under the sentencing factors set forth in 18 U.S.C. § 3553(a).” United States v. Irizarry, 553 U.S. ---, ---, 127 S. Ct. 2198, 2202-03 (2008). The district court committed plain error in failing to notify Caldwell of its intention to depart from the guidelines. Fed. R. Crim. P. 32(h); United States v. Evans-Martinez, 530 F.3d 1164, 1168 (9th Cir. 2008). That error was harmless, though, because the district court did not commit plain error in failing to notify Caldwell of its intent to impose a sentence at variance with the guidelines. United States v. Orlando, No. 07-50473, --- F.3d ---, ---, Slip. Op. at 864-66 (9th Cir. Jan. 23, 2009).

The district court did not abuse its discretion in imposing a 60-month sentence. United States v. Cherer, 513 F.3d 1150, 1159-60 (9th Cir. 2008). Caldwell had a violent history, suffered from mental disorders, and stalked K.B. for over a decade, sending her threatening letters and driving with a gun to where she lived. He even sent her another threatening letter after his arrest.

**AFFIRMED.**