

MAR 30 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NOT FOR PUBLICATION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 - Appellant,

v.

STEVEN ERIK PROWLER,

Defendant - Appellee.

No. 07-50467

D.C. No. CR-06-00391-RMT

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Robert M. Takasugi, District Judge, Presiding

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

The government appeals from the 120-month sentence imposed following Steven Erik Prowler's guilty-plea conviction for engaging in illicit sexual conduct

* 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).

with a minor in foreign places, in violation of 18 U.S.C. § 2423(c), and traveling with the intent to engage in illicit sexual conduct, in violation of 18 U.S.C. § 2423(b). We have jurisdiction pursuant to 28 U.S.C. § 1291. We vacate and remand.

Both parties agree that remand is needed. We agree. Because we cannot determine from the record whether the district court correctly calculated the Guidelines range, we vacate the sentence and remand for resentencing. *See Gall v. United States*, 128 S. Ct. 586, 596 (2007) (“[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range.”); *see also United States v. Grissom*, 525 F.3d 691, 696-97 (9th Cir. 2008); *United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc).

VACATED and REMANDED.