

MAY 21 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NOT FOR PUBLICATION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.

DAVID MOORE, aka Seal A,

Defendant - Appellant.

No. 07-50099

D.C. No. CR-05-00798-FMC

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Florence-Marie Cooper, District Judge, Presiding

Submitted May 12, 2009\*\*

Before: PREGERSON, CANBY, and BERZON, Circuit Judges.

David Moore appeals from the 120-month sentence imposed following his guilty-plea conviction for possession with intent to distribute a controlled

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

substance, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(iii), and (b)(1)(B)(iii).

We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Moore contends that his sentence is procedurally and substantively unreasonable. These contentions fail. *See* U.S.S.G. § 5G1.1; *see also United States v. Cardenas*, 405 F.3d 1046, 1048 (9th Cir. 2005).

Moore also contends that the district court erred by denying a downward departure based on alleged sentencing entrapment. This contention fails because Moore has not shown, by a preponderance of the evidence, that he lacked the intent or capability to produce the larger quantity of drugs. *See United States v. Mejia*, 559 F.3d 1113, 1118 (9th Cir. 2009).

**AFFIRMED.**