

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NOT FOR PUBLICATION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.

LEON RUSSELL RUSSETTE,

Defendant - Appellant.

No. 08-30261

D.C. No. 4:07-cr-00150-SEH

MEMORANDUM\*

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

Submitted May 12, 2009\*\*

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

Leon Russell Russette appeals from the 76-month sentence imposed following his guilty-plea conviction for assault with a dangerous weapon, in

---

\* 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).

violation of 18 U.S.C. §§ 113(a)(3) and 1153. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we vacate and remand for resentencing.

Russette contends that his sentence is substantively unreasonable. In the instant case, the district court applied a four-level enhancement for the use of a dangerous weapon pursuant to U.S.S.G. § 2A2.2(b)(2)(B) and a three-level enhancement because the victim sustained bodily injury pursuant to U.S.S.G. § 2A2.2(b)(3)(A). Russette does not challenge the applicability of these enhancements under the Guidelines. He contends, however, that a sentence at the high end of the Guidelines range is unreasonable in light of the factors in 18 U.S.C. § 3553(a), including the nature of the offense and his history and circumstances. We agree that a sentence at the high end of the Guidelines range overstates the seriousness of the offense, and, in light of the totality of the circumstances, we conclude that the sentence is substantively unreasonable. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc). Accordingly, we vacate Russette's 76-month sentence and remand with instructions for the district court to resentence Russette after considering whether the Guidelines range overstates the seriousness of the offense given the weapon used and the apparently minimal injury.

**VACATED; REMANDED for resentencing.**