

JUL 21 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES DALE MIDWELL,

Defendant - Appellant.

No. 08-30425

D.C. No. 2:07-CR-00170-FVS

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Fred L. Van Sickle, District Judge, Presiding

Submitted July 14, 2009\*\*

Before: SCHROEDER, THOMAS, and WARDLAW, Circuit Judges.

James Dale Midwell appeals from the lifetime period of supervised release imposed following his guilty-plea conviction for possession of child pornography,

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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).

in violation of 18 U.S.C. § 2252(A)(a)(5)(B). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Midwell contends that the district court procedurally erred by failing to consider all of the 18 U.S.C. § 3553(a) sentencing factors and that a lifetime term of supervised release is substantively unreasonable. The district did not procedurally err. *See United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc). The lifetime term of supervised release is not substantively unreasonable in light of the totality of the circumstances. *See United States v. Daniels*, 541 F.3d 915, 922-24 (9th Cir. 2008); *see also Carty*, 520 F.3d at 993.

**AFFIRMED.**