

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 02 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARK ALLEN McMILLION,

Defendant - Appellant.

No. 07-30472

D.C. No. CR-99-00112-JDS-7

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Jack D. Shanstrom, District Judge, Presiding

Submitted September 14, 2009**

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Mark Allen McMillion appeals from the 188-month sentence imposed by the district court, following his jury-trial conviction for violations of the Mann and

* 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).

Transportation Acts, 18 U.S.C. §§ 1952, 2421, 2422(a), 2423(a) . We have jurisdiction under 28 U.S.C. § 1291. We affirm.

The record supports the conclusion that the district court found unique vulnerability and did not clearly err in imposing the U.S.S.G § 3A1.1 enhancement given the victim's small size and stature and history of sexual assault and abandonment. *See United States v. Williams*, 291 F.3d 1180, 1196 (9th Cir. 2002) (per curiam), *overruled on other grounds by United States v. Gonzales*, 506 F.3d 940 (9th Cir. 2007).

AFFIRMED.