

OCT 16 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NOT FOR PUBLICATION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.

DION PAUL DOMINGUEZ,

Defendant - Appellant.

No. 08-30428

D.C. No. 9:08-cr-00028-DWM-1

MEMORANDUM *

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted October 13, 2009**
Seattle, Washington

Before: RAWLINSON and CALLAHAN, Circuit Judges, and CUDAHY, ***
Senior Circuit Judge.

* 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).

*** The Honorable Richard D. Cudahy, Senior United States Circuit Judge for the Seventh Circuit, sitting by designation.

Appellant Dion Paul Dominguez (Dominguez) appeals the sentence imposed following his guilty plea for violation of 18 U.S.C. § 922(g) as a felon in possession of a firearm.

1. We review the constitutionality of a sentence *de novo*. See *United States v. Barajas-Avalos*, 377 F.3d 1040, 1060 (9th Cir. 2004), *as amended*. The district court committed no error by applying the enhancement provided for in United States Sentencing Guidelines § 2K2.1(b)(4). Application of the “stolen weapon” enhancement does not require proof of *mens rea*. See *United States v. Goodell*, 990 F.2d 497, 498-99 (9th Cir. 1993); *see also United States v. Gonzalez*, 262 F.3d 867, 870 (9th Cir. 2001) (addressing a similar enhancement for use of a minor in commission of an offense); *United States v. Lavender*, 224 F.3d 939, 941 (9th Cir. 2000) (confirming that no showing of intent to use a dangerous weapon as such is required before applying a “dangerous weapon” enhancement). Contrary to Dominguez’s assertion, nothing in *United States v. Booker*, 543 U.S. 220 (2005), lessens the precedential effect of these cases.

2. We review Dominguez's overall sentence for reasonableness in light of the 18 U.S.C. § 3553(a) factors. *United States v. Marcial-Santiago*, 447 F.3d 715, 717 (9th Cir. 2006). The sentence imposed was reasonable. *See United States v. Overton*, 573 F.3d 679, 700-01 (9th Cir. 2009), *as amended* (affirming a sentence imposed after the district court's consideration of defendant's leniency argument and the § 3553(a) factors.).

3. We review the district court's denial of a subpoena request pursuant to Federal Rule of Criminal Procedure 17(b) for an abuse of discretion. *See United States v. Etimani*, 328 F.3d 493, 501 (9th Cir. 2003). Any error in denying the subpoena requested by Dominguez was harmless, as it would not have affected the district court's decision to apply the enhancement. *See United States v. Severino*, 316 F.3d 939, 948 (9th Cir. 2003) (en banc) (applying the harmless error standard).

AFFIRMED.