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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>BYRON B. YELLOWBEAR, Jr.,</p> <p>Defendant - Appellant.</p>
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No. 09-30078

D.C. No. 1:08-CR-00037-JDS

MEMORANDUM\*

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

Submitted December 17, 2009\*\*

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Byron B. Yellowbear, Jr. appeals from the 180-month sentence imposed following his guilty-plea conviction for aggravated sexual abuse, in violation of 18 U.S.C. §§ 1153(a) and 2241(a)(1). We have jurisdiction pursuant to 28 U.S.C.

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

§ 1291, and we affirm.

Yellowbear contends that the district court erred by failing to adequately explain the sentence and by using a disputed fact when imposing the sentence. The record reflects that the district court expressly justified the sentence in terms of the applicable § 3553(a) factors. Furthermore, there is nothing in the record to indicate that the district court relied on a disputed fact when imposing the sentence. The district court did not procedurally err. *See Gall v. United States*, 552 U.S. 38, 49-50 (2007).

Yellowbear also contends that the district court's imposition of a sentence toward the high end of the advisory Guidelines range was greater than necessary to comply with the purposes of sentencing set forth in § 3553(a). We conclude that the sentence is substantively reasonable. *United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc).

**AFFIRMED.**