

JAN 25 2010

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NOT FOR PUBLICATION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.

THOMAS JACKSON ROGERS,

Defendant - Appellant.

No. 08-50504

D.C. No. 3:06-cr-01239-MLH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Marilyn L. Huff, District Judge, Presiding

Submitted January 11, 2010**

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Thomas Jackson Rogers appeals from the two concurrent 188-month sentences imposed following his guilty-plea conviction for armed bank robbery, in

* 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).

violation of 18 U.S.C. § 2113(a), (d), and being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Rogers contends that the district court erred by determining that he was a career offender because his two prior felony convictions were related under U.S.S.G. § 4A1.2(a)(2) (2005), and therefore should have been counted as a single predicate offense. Even assuming that the “clear and convincing” evidence standard applied, *see United States v. Jordan*, 256 F.3d 922, 927-28 (9th Cir. 2001), the record contained sufficient evidence that the offenses were unrelated because they were committed on different dates, involved different victims, and were prosecuted by different sovereigns in different proceedings. *See* § 4A1.2(a)(2) & cmt. n.3 (2005); *see also United States v. Asberry*, 394 F.3d 712, 719-20 (9th Cir. 2005); *United States v. Chapnick*, 963 F.2d 224, 226-29 (9th Cir. 1992), *superseded on other grounds as stated in United States v. Gallegos-Gonzalez*, 3 F.3d 325, 327-28 (9th Cir. 1993).

AFFIRMED.