

MAR 03 2010

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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NOT FOR PUBLICATION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.

LAM HOANG LAI,

Defendant - Appellant.

No. 09-50117

D.C. No. 8:08-cr-00056-AG

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Andrew J. Guilford, District Judge, Presiding

Submitted February 16, 2010\*\*

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

Lam Hoang Lai appeals from his below-the-Guidelines 87-month sentence 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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

Lai contends that the district court procedurally erred when it failed to consider the disparity between the recommended Guidelines sentence and the maximum sentence he could have received if convicted of the same conduct in a California state court. This argument is foreclosed by *United States v. Ringgold*, 571 F.3d 948, 951 (9th Cir. 2009) (holding that “the district court does not commit procedural error in its [section] 3553(a) analysis if it does not consider disparities between state and federal sentences for the same criminal conduct”).

Lai also contends that his sentence is substantively unreasonable. The record reflects that, under the totality of the circumstances, Lai’s 87-month sentence is not substantively unreasonable. *United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc); *see also Rita v. United States*, 551 U.S. 338 (2007).

**AFFIRMED.**