

MAR 18 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NOT FOR PUBLICATION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.

BRADLY LEO NELSON,

Defendant - Appellant.

No. 09-10133

D.C. No. 1:08-CR-00174-AWI-1

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, Chief District Judge, Presiding

Argued and Submitted March 8, 2010
San Francisco, California

Before: HUG, REINHARDT and BYBEE, Circuit Judges.

Defendant Bradley Leo Nelson appeals his conviction and sentence for receipt of child pornography in violation of 18 U.S.C. § 2252(a)(2). We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

The district court did not abuse its discretion in imposing Nelson's federal sentence for child pornography to run partially consecutive to his state sentence for child molestation. The court correctly found that the state and federal convictions were based on different harms to different victims at different times, and thus did not result from the same course of conduct.

We also reject Nelson's argument that the district court abused its discretion in imposing prepubescent victim, sadistic or masochistic conduct, and vulnerable victim sentencing enhancements. This claim is foreclosed by *United States v. Holt*, 510 F.3d 1007 (9th Cir. 2007) and *United States v. Wright*, 373 F.3d 935 (9th Cir. 2004).

Finally, the district court did not abuse its discretion in rejecting Nelson's prosecutorial misconduct claim, which was based on the government's re-filing of his federal indictment after he was sentenced for state charges that resulted from the same investigation. Nelson has presented no evidence that there was an agreement not to re-file the federal charges or that the government acted in bad faith by doing so.

AFFIRMED.