

MAR 29 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NOT FOR PUBLICATION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.

DAVID BURLESON,

Defendant - Appellant.

No. 09-50294

D.C. No. 2:08-cr-01182-SJO

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
S. James Otero, District Judge, Presiding

Submitted March 16, 2010**

Before: SCHROEDER, PREGERSON, and RAWLINSON, Circuit Judges.

David Burleson appeals from his 16-month sentence imposed following a guilty-plea conviction for unlawful possession of Postal Keys, in violation of 18 U.S.C. § 1704. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

* 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).

Burleson contends that his sentence four months above the United States Sentencing Guidelines range is substantively unreasonable. A review of the record demonstrates that the district court did not procedurally err and the sentence is not substantively unreasonable in light of the factors set forth in 18 U.S.C. § 3553(a) and the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *see also United States v. Truong*, 587 F.3d 1049, 1052 (9th Cir. 2009) (per curiam) (affirming an above-Guidelines sentence where the district court “sufficiently explained that the Guidelines did not account for [defendant’s] particular type of recidivism”).

AFFIRMED.