

APR 01 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NOT FOR PUBLICATION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.

LEVI SAMUEL LaBUFF,

Defendant - Appellant.

No. 08-30423

D.C. No. 4:03-cr-00003-SEH

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Montana  
Sam E. Haddon, District Judge, Presiding

Submitted March 16, 2010\*\*

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

Levi Samuel LaBuff appeals from the 51-month consecutive sentence imposed upon a second remand for resentencing, following his jury-trial conviction

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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).

for being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1).

We have jurisdiction pursuant to 28 U.S.C. § 1291, and we vacate and remand.

LaBuff contends that the district court acted vindictively by imposing a harsher aggregate sentence following his partially successful appeal. We previously vacated LaBuff's sentence and remanded for resentencing because the district court's failure to provide any explanation for imposing a longer aggregate sentence triggered a presumption of vindictiveness that the government did not rebut.

*See United States v. LaBuff*, 285 Fed.Appx. 503, 504 (9th Cir. 2008). The reasons provided by the district court upon remand also do not adequately rebut the presumption of vindictiveness. *See Wasman v. United States*, 468 U.S. 559, 564-65, 572 (1984); *see also United States v. Rapal*, 146 F.3d 661, 663-64 (9th Cir. 1998).

Accordingly, we once again vacate LaBuff's sentence and remand for resentencing consistent with our current and prior memorandum dispositions. We further order that the case be reassigned to a different district court judge.

*See United States v. Paul*, 561 F.3d 970, 975 (9th Cir. 2009).

**SENTENCE VACATED; REMANDED FOR REASSIGNMENT AND  
RESENTENCING.**