

APR 22 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NOT FOR PUBLICATION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.

MICHAEL EUGENE HOLLIS,

Defendant - Appellant.

No. 09-10215

D.C. No. 1:08-CR-00276-OWW

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

Michael Eugene Hollis appeals from the 210-month sentence imposed following his guilty-plea conviction for receipt or distribution of material involving the sexual exploitation of a minor, in violation of 18 U.S.C. § 2252(a)(2). We have

* 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).

jurisdiction pursuant to 28 U.S.C. § 1291, and we vacate Hollis’ sentence and remand for resentencing.

Hollis contends that the district court clearly erred when it applied a five-level enhancement, pursuant to U.S.S.G. § 2G2.2(b)(3)(B), for distributing pornographic images “for the receipt, or expectation of receipt, of a thing of value,” because there was no evidence in the record to support its finding that he shared files in order to obtain any benefit. We agree that the record fails to establish that Hollis distributed pornographic material in order to obtain faster access to other pornographic images or any other benefit. *See* U.S.S.G. § 2G2.2(b)(3)(B) & cmt. n. 1; *see also United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc) (explaining that it would be procedural error for a district court to choose a sentence based on clearly erroneous facts). Accordingly, we vacate Hollis’ sentence and remand for further findings consistent with this opinion.

VACATED and REMANDED.