

JUN 14 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NOT FOR PUBLICATION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.

LEONARD MARCU,

Defendant - Appellant.

No. 07-50177

D.C. No. CR-06-00875-MLR

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Leonard Marcu appeals from the 110-month sentence imposed following his guilty-plea conviction for possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B). We have jurisdiction under 28 U.S.C. § 1291, and we

* 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).

vacate Marcu's sentence and remand for resentencing.

Marcu contends that the district court plainly procedurally erred by failing to: (1) announce the correctly calculated Guidelines range; (2) discuss the 18 U.S.C. § 3553(a) sentencing factors; (3) provide an adequate explanation for the sentence; and (4) allow the government an opportunity to speak, as required by Fed. R. Crim. P. 32(i)(4)(A)(iii). The record indicates that the district court plainly erred with regard to these matters. *See United States v. Waknine*, 543 F.3d 546, 554-55 (9th Cir. 2008). Accordingly, we vacate Marcu's sentence and remand for resentencing. *See id.* at 555.

In light of this disposition, we do not reach Marcu's remaining contentions regarding the Special Conditions of his supervised release. However, we acknowledge, as the government concedes, that one of Marcu's contentions appears meritorious. *See United States v. Esparza*, 552 F.3d 1089, 1091 (9th Cir. 2009) (per curiam).

VACATED and REMANDED.