

JUN 16 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>TOMMY MCINTOSH, Jr.,</p> <p>Defendant - Appellant.</p>
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No. 09-10155

D.C. No. 5:08-CR-00377-RMW-1

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Ronald M. Whyte, Senior District Judge, Presiding

Submitted February 3, 2010\*\*  
San Francisco, California

Before: HUG, BEEZER and HALL, Circuit Judges.

Defendant-appellant Tommy McIntosh, Jr. (“McIntosh”) appeals from a final judgment convicting him of one count of being a felon in possession of a firearm and ammunition. McIntosh was found guilty of the crime after a one-day

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

bench trial, and the district court sentenced him to 108 months imprisonment. We have jurisdiction pursuant to 18 U.S.C. § 1291, and we affirm.

The facts of this case are known to the parties. We do not repeat them.

## I

We review “all sentencing decisions” for an abuse of discretion. *United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

## II

The district court acted well within its discretion by sentencing McIntosh to 108 months imprisonment, 12 months below the statutory maximum. Contrary to McIntosh’s assertions, the district court engaged in a “thorough and thoughtful consideration of the § 3553(a) factors.” *United States v. Cabaccang*, 481 F.3d 1176, 1188 (9th Cir. 2007). In reaching its decision, the district court explicitly acknowledged McIntosh’s “unfortunate upbringing” and struggles with alcohol abuse. Given McIntosh’s involvement with gangs and pervasive and violent criminal history, the district court acted within its discretion in ordering an above guidelines sentence “to afford adequate deterrence to criminal conduct” and “to protect the public from further crimes of the defendant.” 18 U.S.C. § 3553(a)(2)(B) and (C).

**AFFIRMED.**