

JUL 16 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NOT FOR PUBLICATION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.

HAROLD DEAN DUPREE,

Defendant - Appellant.

No. 09-30341

D.C. No. 4:09-cr-00024-SEH-1

MEMORANDUM*

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

Argued and Submitted July 13, 2010
Seattle, Washington

Before: REINHARDT, GRABER and PAEZ, Circuit Judges.

Harold Dupree pled guilty to voluntary manslaughter and was sentenced to an above-Guidelines sentence of 160 months. He appeals that sentence, contending that it was substantively unreasonable. We have jurisdiction, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

We review sentences for abuse of discretion, and “only a procedurally erroneous or substantively unreasonable sentence will be set aside.” *United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc). Dupree contends that the justification for his sentence that the district court provided was not “sufficiently compelling,” *see id.* at 991, and that his sentence was substantively unreasonable. The district court justified the above-Guidelines sentence it imposed on Dupree by reference to Dupree’s extensive criminal record, which included tribal convictions for violent conduct and a 1983 murder conviction that were not counted in the Guidelines criminal history calculation. On this record, we cannot conclude that the district court’s justification for the sentence imposed was insufficient or that the sentence itself was substantively unreasonable. *See* 18 U.S.C. § 3553(a).

AFFIRMED.