

SEP 29 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NOT FOR PUBLICATION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 - Appellant,

v.

DEWAYNE DONELSON,

Defendant - Appellee.

No. 10-50020

D.C. No. 09-cr-00502-ODW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Otis D. Wright, District Judge, Presiding

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

The United States of America appeals from the 24-month sentence imposed on Dewayne Donelson following his guilty-plea conviction for distribution of at least five grams of cocaine in the form of crack cocaine, in violation of 21 U.S.C.

* 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).

§ 841(a)(1), (b)(1)(B)(iii). We have jurisdiction under 28 U.S.C. § 1291. We vacate and remand for re-sentencing.

The government contends that the district court erred when it imposed a sentence below the statutory mandatory minimum after considering disparities in sentences for offenses involving crack and powder cocaine. “Congress intended not to disturb statutory minimums through the application of the [18 U.S.C.] § 3553(a) factors.” *See United States v. Wipf*, No. 09-50291, 2010 U.S. App. LEXIS 18167, at *7 (August 31, 2010). Because the district court based the sentence on a factor set forth in 18 U.S.C. § 3553(a), rather than subsections (e) or (f), we vacate and remand for re-sentencing.

VACATED and REMANDED.