

JAN 21 2011

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NOT FOR PUBLICATION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.

JOSHUA P. SCARBOROUGH,

Defendant - Appellant.

No. 10-30040

D.C. No. 1:09-cr-00076-RFC

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Richard F. Cebull, Chief District Judge, Presiding

Submitted January 10, 2011**

Before: BEEZER, TALLMAN, and CALLAHAN, Circuit Judges.

Joshua P. Scarborough appeals the 60-month sentence imposed following his guilty-plea convictions for theft of firearms from a federal licensee in violation of 18 U.S.C. §§ 922(u), 2. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* 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).

Scarborough contends that his sentence is substantively unreasonable. The record reflects that the 60-month sentence is substantively reasonable in light of the totality of the circumstances and the factors set forth in 18 U.S.C. § 3553(a). *See Gall v. United States*, 552 U.S. 38, 51-52 (2007); *see also United States v. Orlando*, 553 F.3d 1235, 1239 (9th Cir. 2009) (upholding upward variance where the district court found the guideline sentence insufficient to provide the necessary deterrence, to address the need for the defendant to learn respect for the law, and to reflect the nature of the defendant's criminal history).

AFFIRMED.