

MAR 08 2011

MOLLY C. DWYER, CLERK
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NOT FOR PUBLICATION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>ERNEST WILLIAM PELTZER,</p> <p>Defendant - Appellant.</p>
--

No. 10-30034

D.C. No. 1:09-cr-00069-JDS

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Jack D. Shanstrom, District Judge, Presiding

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Ernest William Peltzer appeals from the 135-month sentence imposed following his guilty-plea conviction for aggravated sexual abuse of a minor, in violation of 18 U.S.C. §§ 1152 and 2241(a). 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).

Peltzer contends that the district court erred by relying on clearly erroneous facts. This contention lacks merit because the district court did not rely on any facts that were not supported by the record. *See United States v. Cantrell*, 433 F.3d 1269, 1284 (9th Cir. 2006).

Peltzer also contends that his sentence is unreasonable because it failed to account for his background and low risk of recidivism. The record reflects that the district court considered the age of the offense and the likelihood that Peltzer might reoffend as part of its analysis of the 18 U.S.C. § 3553(a) sentencing factors, and provided a well-reasoned explanation for the sentence imposed. Peltzer's sentence at the bottom of the Guidelines range is substantively reasonable under the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *see also United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc).

AFFIRMED.