

MAR 15 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NOT FOR PUBLICATION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.

RAYNE WOLERY,

Defendant - Appellant.

No. 10-30081

D.C. No. 6:09-cr-00015-CCL

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Charles C. Lovell, District Judge, Presiding

Submitted March 8, 2011**

Before: FARRIS, LEAVY, and BYBEE, Circuit Judges.

Rayne Wolery appeals from the 180-month sentence imposed following his guilty-plea conviction for attempted sexual exploitation of children, in violation of 18 U.S.C. § 2251(a). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Wolery contends that the district court erred by failing to recognize its

* 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).

authority to depart downward from the 15-year mandatory minimum sentence called for by the statute. This contention lacks merit. In the absence of a motion from the government, the district court did not have discretion to depart downward from the mandatory minimum. *See United States v. Valente*, 961 F.2d 133, 134-35 (9th Cir. 1992); *see also United States v. Quach*, 302 F.3d 1096, 1103 n.3 (9th Cir. 2002).

Wolery also contends that the mandatory minimum sentence violates the Eighth Amendment prohibition against cruel and unusual punishment. This contention also lacks merit. *See United States v. Meiners*, 485 F.3d 1211, 1212-13 (9th Cir. 2007) (per curiam).

AFFIRMED.