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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NOT FOR PUBLICATION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>CHARLES LUCIOUS,</p> <p>Defendant - Appellant.</p>

No. 10-10584

D.C. No. 2:09-cr-00224-RLH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Roger L. Hunt, Chief District Judge, Presiding

Submitted September 27, 2011**

Before: HAWKINS, SILVERMAN, and W. FLETCHER, Circuit Judges.

Charles Lucious appeals from the 60-month sentence imposed following his guilty-plea conviction for being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g). 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).

Lucious contends that his below-Guidelines sentence was substantively unreasonable because the district court determined that he was not harmed by his indictment being delayed. In light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including the 10-month downward variance Lucious was granted for his rehabilitative efforts during the indictment delay period, Lucious's criminal history, and the new crimes Lucious committed during the indictment delay period, Lucious's below-Guidelines sentence is not substantively unreasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

AFFIRMED.