

JAN 18 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GONG KIM,

Defendant - Appellant.

No. 11-30021

D.C. No. 3:10-cr-00025-HA-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Ancer L. Haggerty, Senior District Judge, Presiding

Argued and Submitted January 12, 2012
Seattle, Washington

Before: O'SCANNLAIN and RAWLINSON, Circuit Judges, and MOLLOY,
District Judge.**

Gong Kim pled guilty to one count of exporting munitions without a license
in violation of 22 U.S.C. § 2778. On appeal, Kim argues that the district court

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The Honorable Donald W. Molloy, United States District Judge for
the District of Montana, sitting by designation.

should have found a base offense level of 14 because his offense “involved only non-fully automatic small arms (rifles, handguns, or shotguns), and the number of weapons did not exceed ten.” United States Sentencing Guidelines § 2M5.2(a)(2).

The district court correctly found a base offense level of 26 because Kim exported gun parts, which are not “non-fully automatic small arms” within the definition of section 2M5.2(a)(2). *See United States v. Carper*, 659 F.3d 923, 924–25 (9th Cir. 2011). Moreover, Kim’s offense involved enough parts to service more than ten weapons.

AFFIRMED.