

JUL 19 2012

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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NOT FOR PUBLICATION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>ROBERT ERNEST PEEPLES, Jr.,</p> <p>Defendant - Appellant.</p>
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No. 11-30259

D.C. No. 9:10-cr-00029-DWM

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted July 17, 2012**

Before: SCHROEDER, THOMAS, and SILVERMAN, Circuit Judges.

Robert Ernest Peeples, Jr., appeals from the 84-month sentence imposed following his guilty-plea conviction for receipt of child pornography, in violation of 18 U.S.C. § 2252A(a)(2). We have jurisdiction under 28 U.S.C. § 1291, and we

* 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).

affirm.

Peeples contends that the district court procedurally erred by failing to explain adequately the sentence, including how it weighed the psychosexual evaluation. The record reflects that the district court adequately explained the sentence and did not otherwise procedurally err. *See United States v. Carty*, 520 F.3d 984, 992–93 (9th Cir. 2008) (en banc).

Peeples also contends that the district court failed to appreciate adequately its discretion to vary from the child pornography Guidelines and erred by not categorically rejecting the child pornography Guidelines in this case. The record reflects that the court appreciated its discretion to vary from the child pornography Guidelines. It did not err in failing to reject them categorically. *See United States v. Henderson*, 649 F.3d 955, 962-63 (9th Cir. 2011).

Peeples also contends that his sentence is substantively unreasonable. In light of the totality of the circumstances and the 18 U.S.C. § 3553(a) sentencing factors, the district court’s below-Guidelines sentence is substantively reasonable. *See Carty*, 520 F.3d at 993.

Peeples’s motion for judicial notice is denied.

AFFIRMED.