

SEP 20 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NOT FOR PUBLICATION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>CHARLES LAWSOM TUCKER,</p> <p>Defendant - Appellant.</p>

No. 11-30238

D.C. No. 1:10-cr-00084-JDS

MEMORANDUM*

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

Submitted September 10, 2012**

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Charles Lawsom Tucker appeals from the 108-month sentence imposed following his guilty-plea conviction for two counts of distribution and receipt of child pornography, in violation of 18 U.S.C. § 2252A(a)(2). We have jurisdiction

* 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).

under 28 U.S.C. § 1291, and we affirm.

Tucker contends that the district court procedurally erred by failing adequately to explain why it rejected his arguments in support of a shorter sentence. We review for plain error, *see United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010), and we find none. The record reflects that the district court listened to Tucker's arguments and understood its discretion to vary from the child pornography Guidelines on policy grounds, but found the circumstances insufficient to warrant more than a two-level downward variance. The court did not procedurally err. *See Rita v. United States*, 551 U.S. 338, 358-59 (2007).

Tucker also contends that his sentence is substantively unreasonable because it is greater than necessary to accomplish the goals of sentencing. Tucker's below-Guidelines sentence is substantively reasonable in light of the totality of the circumstances and the 18 U.S.C. § 3553(a) sentencing factors. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

AFFIRMED.