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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NOT FOR PUBLICATION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.

DAVID LEE SPOTTED EAGLE,

Defendant - Appellant.

No. 12-30094

D.C. No. 4:11-cr-00087-SEH

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted November 13, 2012**

Before: CANBY, TROTT, and W. FLETCHER, Circuit Judges.

David Lee Spotted Eagle appeals from the 57-month sentence imposed following his guilty-plea conviction for assault resulting in serious bodily injury, in violation of 18 U.S.C. §§ 1153(a) and 113(a)(6). We have jurisdiction under 28

* 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).

U.S.C. § 1291, and we affirm.

Spotted Eagle contends that the district court erred by applying a two-level vulnerable victim enhancement pursuant to U.S.S.G. § 3A1.1(b)(1). Specifically, he contends that there was insufficient evidence to support the court's finding that the victim was asleep. The court's finding is supported by the record and is not clearly erroneous. *See United States v. Holt*, 510 F.3d 1007, 1010 (9th Cir. 2007).

To the extent Spotted Eagle contends that the district court procedurally erred by failing to explain why the enhancement was warranted, this contention fails. *See United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc).

AFFIRMED.