

OCT 02 2013

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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NOT FOR PUBLICATION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.

DAVID KEITH MERRIMAN,

Defendant - Appellant.

No. 12-30396

D.C. No. 1:11-cr-00025-RFC

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Richard F. Cebull, District Judge, Presiding

Submitted September 24, 2013**

Before: RAWLINSON, N.R. SMITH, and CHRISTEN, Circuit Judges.

David Keith Merriman appeals from the district court's judgment and challenges the 96-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 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).

Merriman contends that his sentence is substantively unreasonable in light of his background, age, lack of criminal history, and low risk of recidivism. The district court did not abuse its discretion in imposing Merriman's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The within-Guidelines sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including Merriman's failure to recognize the severity of his offense. *See id.*

To the extent that Merriman claims that the district court erred by failing to consider all of the section 3553(a) sentencing factors and by ignoring his policy argument that the child pornography Guidelines result in an unduly harsh sentence, the record does not support these contentions.

AFFIRMED.