

APR 10 2015

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NOT FOR PUBLICATION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.

ANTHONY MICHAEL GONZALES,

Defendant - Appellant.

No. 14-50283

D.C. No. 3:13-cr-03108-H-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Marilyn L. Huff, District Judge, Presiding

Submitted April 7, 2015 **

Before: FISHER, TALLMAN, and NGUYEN, Circuit Judges.

Anthony Michael Gonzales appeals from the district court's judgment and challenges the 120-month sentence imposed following his guilty-plea conviction for receipt of images of minors engaged in sexually explicit conduct in violation of 18 U.S.C. § 2252(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.

Gonzales asserts that the district court's sentence of 120 months is substantively unreasonable in light of his mitigating circumstances, including his youth and lack of criminal history. To determine whether a sentence is substantively unreasonable, we consider the 18 U.S.C. § 3553(a) factors and the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51 (2007). We review for abuse of discretion and “will provide relief only in rare cases.” *United States v. Ressam*, 679 F.3d 1069, 1086, 1088 (9th Cir. 2012) (en banc).

Though the Guidelines sentence is harsh, this is not the rare case where relief is appropriate. The district court granted a five-level downward departure based on the mitigating factors argued by Gonzales. The 120-month sentence is substantively reasonable in light of the section 3553(a) sentencing factors and the totality of the circumstances. *See Gall*, 552 U.S. at 51.

AFFIRMED.