

FILED

APR 18 2016

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NOT FOR PUBLICATION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 - Appellant,

v.

THOMAS JEFFREY DAVIS,

Defendant - Appellee.

No. 15-50118

D.C. No. 2:12-cr-01206-R-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Argued and Submitted April 4, 2016
Pasadena, California

Before: FARRIS, BEA, and M. SMITH, Circuit Judges.

The United States appeals defendant Thomas Jeffery Davis's 24-month sentence imposed following his guilty-plea conviction for engaging in business as a manufacturer and dealer in firearms without registration, in violation of 26 U.S.C. § 5861(a), and for possessing an unregistered firearm, in violation of 26

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

U.S.C. § 5861(d). We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand for resentencing.

The government argues that the district court's substantial downward departure from the applicable Guidelines range was procedural error because the sentence was chosen on the basis of clearly erroneous facts. The district court explained its decision by stating that it felt that Davis was not in the business of guns and that the confidential informant used by the government was the sole source of the guns and the allegations against Davis. These assertions are not supported by the record, which shows that Davis was the source of all firearms involved and that he sold those firearms for profit. A sentence based on clearly erroneous facts cannot be sustained. *United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

VACATED and REMANDED.