

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 29 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

EDWARD LEE SULLIVAN, a.k.a. Three
Stacks,

Defendant-Appellant.

No. 16-10509

D.C. No. 4:09-cr-00167-JST

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jon S. Tigar, District Judge, Presiding

Submitted September 26, 2017**

Before: SILVERMAN, TALLMAN, and N.R. SMITH, Circuit Judges.

Edward Lee Sullivan appeals from the district court's judgment and challenges the 324-month sentence imposed upon remand for resentencing following his bench-trial conviction for production of child pornography, in violation of 18 U.S.C. § 2251(a); and possession of child pornography, in violation

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

of 18 U.S.C. § 2252(a)(4). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Sullivan contends that the district court erred by applying an obstruction of justice enhancement under U.S.S.G. § 3C1.1. We review the district court's factual findings for clear error and its application of the Guidelines to the facts for abuse of discretion. *See United States v. Gasca-Ruiz*, 852 F.3d 1167, 1170 (9th Cir. 2017) (en banc). Contrary to Sullivan's contention, the district court made sufficient factual findings to support the enhancement, including a finding that Sullivan willfully gave false testimony on a material matter at trial. *See United States v. Jimenez-Ortega*, 472 F.3d 1102, 1103 (9th Cir. 2007) (discussing the required elements for an obstruction of justice enhancement); *see also* U.S.S.G. § 3C1.1 cmt. n.4(F) (enhancement is proper when defendant provides "materially false information to a judge").

AFFIRMED.