FILED

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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**NOT FOR PUBLICATION**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

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| UNITED STATES OF AMERICA,<br><br>Plaintiff - Appellee,<br><br>v.<br><br>DANIEL IVAN FRANTZ,<br><br>Defendant - Appellant. | No. 11-30358<br><br>D.C. No. 1:10-cr-00130-RFC<br><br>MEMORANDUM[*] |

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

Submitted October 9, 2012[**]

Before: RAWLINSON, MURGUIA, and WATFORD, Circuit Judges.

Daniel Ivan Frantz appeals from the 121-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.

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[*] 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).

Frantz contends that the district court procedurally erred by focusing on the seriousness of the offense to the exclusion of the other 18 U.S.C. § 3553(a) sentencing factors, and by basing his sentence on the erroneous conclusion that he presents a risk of danger to young children. The record reflects that the district court adequately considered the section 3553(a) sentencing factors and did not base the sentence on any clearly erroneous facts. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

Frantz also contends that his sentence is substantively unreasonable because the district court did not vary from the child pornography Guidelines on policy grounds, thereby creating a disparity between his sentence and the sentences of defendants in cases where the court does vary downward. In light of the totality of the circumstances and the 18 U.S.C. § 3553(a) sentencing factors, the sentence at the bottom of the Guidelines range is substantively reasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *United States v. Henderson*, 649 F.3d 955, 964 (9th Cir. 2011) ("[D]istrict courts are not obligated to vary from the child pornography Guidelines on policy grounds if they do not have, in fact, a policy disagreement with them.").

**AFFIRMED.**