

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 21 2018

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 17-30203

Plaintiff-Appellee,

D.C. No. 1:17-cr-00027-SPW

v.

MEMORANDUM*

DREW DUDLEY JOHN FISHER,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Montana
Susan P. Watters, District Judge, Presiding

Submitted August 15, 2018**

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

Drew Dudley John Fisher appeals from the district court's judgment and challenges the 180-month sentence imposed following his guilty-plea conviction for aggravated sexual abuse, in violation of 18 U.S.C. §§ 1153(a) and 2241(a). 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 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).

Fisher contends that his above-Guidelines sentence is substantively unreasonable because the district court placed too much weight on the nature and circumstances of the offense, and too little weight on his dysfunctional upbringing and mental health and substance abuse issues. The district court did not abuse its discretion. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The record reflects that the court considered Fisher’s mitigating arguments – including his young age, difficult upbringing, and substance abuse issues – as well as the aggravating circumstances of his history and the nature of his offense before determining that the 18 U.S.C. § 3553(a) sentencing factors warranted an above-Guidelines sentence. The sentence is also substantively reasonable in light of the section 3553(a) factors and the totality of the circumstances. *See Gall*, 552 U.S. at 51; *see also United States v. Gutierrez-Sanchez*, 587 F.3d 904, 908 (9th Cir. 2009) (“The weight to be given the various [section 3553(a)] factors in a particular case is for the discretion of the district court.”)

AFFIRMED.