

JAN 28 2008

CATHY A. CATTERSON, 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NOT FOR PUBLICATION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.

SIMON HERNANDEZ,

Defendant - Appellant.

No. 07-30112

D.C. No. CR06-00194-BLW

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Idaho  
B. Lynn Winmill, District Judge, Presiding

Submitted January 14, 2008\*\*

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

Simon Hernandez appeals from the 48-month sentence imposed following his guilty-plea conviction for unlawful possession of a firearm in violation of 18 U.S.C. § 922(g)(1). 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 finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Hernandez contends that the district court erred in that it failed to recognize its discretion to impose a below-Guidelines sentence. We disagree, and conclude that the record indicates that the district court understood its discretion to impose a below-guidelines sentence. *See Gall v. United States*, 128 S. Ct. 586, 597 (2007).

**AFFIRMED.**