

JAN 18 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NOT FOR PUBLICATION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.

DAVID L. SMITH,

Defendant - Appellant.

No. 06-10459

D.C. No. CR-00-00229-MCE

MEMORANDUM *

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, District Judge, Presiding

Submitted January 14, 2008 **

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

David L. Smith appeals from the district court's decision not to change his sentence following limited remand under *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). We have jurisdiction pursuant to 28

* 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).

U.S.C. § 1291, and we affirm.

Smith contends that the district court erred by declining to consider his written allocution, or any other information outside of the original sentencing record. This contention is foreclosed by *United States v. Silva*, 472 F.3d 683, 688 (9th Cir. 2007) (stating that “an *Ameline* remand merely requires review of the record and the views of counsel”).

Smith further contends that his sentence is unreasonable because the district court increased his sentence as a result of his allocution at his original sentencing. However, this contention is not reviewable. *See United States v. Combs*, 470 F.3d 1294, 1297 (9th Cir. 2006).

AFFIRMED.