

FEB 01 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NOT FOR PUBLICATION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.

KENNETH H. TAVES,

Defendant - Appellant.

No. 06-50448

D.C. No. CR-00-00187-JSL

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
J. Spencer Letts, District Judge, Presiding

Submitted January 14, 2008\*\*

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

Kenneth H. Taves appeals from the district court's order, upon limited remand under *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc), concluding that it would have imposed the same sentence had it known that the

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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).

United States Sentencing Guidelines were advisory. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Taves contends that the government breached the parties' plea agreement by arguing for an upward departure from the Guidelines range and an increased sentence on remand. We disagree. Because the plain language of the plea agreement clearly and unambiguously gave the government discretion to argue for additional specific offense characteristics, adjustments and departures, no breach occurred. *See United States v. Ajugwo*, 82 F.3d 925, 928-29 (9th Cir. 1996).

Taves further contends that the district court failed to consider whether the sentence was "sufficient, but not greater than necessary" to achieve the objectives set forth by 18 U.S.C. § 3553(a)(2). Where, as here, a district court determines that the sentence it originally imposed would not have been materially different under an advisory Guidelines system, our review is confined to determining whether the judge "properly understood the full scope of his discretion in a post-*Booker* world." *United States v. Combs*, 470 F.3d 1294, 1297 (9th Cir. 2006). The record shows the district court properly took into account the non-mandatory nature of the Guidelines and understood the full scope of its discretion. *See id.* We thus conclude that the sentence is reasonable. *See id.*

**AFFIRMED.**