

MAR 27 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANALIZA BACANI,

Defendant - Appellant.

No. 06-10452

D.C. No. CR-03-00035-SOM

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Susan Oki Mollway, District Judge, Presiding

Submitted March 18, 2008**

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

Analiza Bacani appeals from the district court's decision, following a limited remand under *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc), that it would not have imposed a different sentence had it known that the

* 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).

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

Bacani contends that, at her original sentencing, the district court abused its discretion and violated her right to due process when it determined that her involvement in a prior methamphetamine transaction constituted relevant conduct pursuant to U.S.S.G. § 1B1.3. Bacani did not raise this contention in her original appeal, and therefore it is unreviewable. *See United States v. Thornton*, 511 F.3d 1221, 1228-29 (9th Cir. 2008); *United States v. Combs*, 470 F.3d 1294, 1297 (9th Cir. 2006).

Bacani also contends that the district court violated her Sixth Amendment rights by enhancing her sentence based on its own factual determination of two material sentencing facts. However, in remanding Bacani's initial appeal pursuant to *United States v. Ameline*, 409 F.3d at 1084-85, we already determined that the district court erred by making those factual determinations. *See United States v. Bacani*, No. 04-10288 (9th Cir. Feb. 24, 2006) (unpublished order). To the extent that Bacani contends that the district court erred by declining to resentence her upon remand, that contention is unreviewable. *See Combs*, 470 F.3d at 1296-97.

AFFIRMED.