

**FILED**

**NOV 26 2007**

**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**NOT FOR PUBLICATION**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.

JOSE MILANES-SANCHEZ,

Defendant - Appellant.

No. 06-30145

D.C. No. CR-04-00044-WFN

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Wm. Fremming Nielsen, Senior District Judge, Presiding

Submitted November 13, 2007\*\*

Before: TROTT, W. FLETCHER, and CALLAHAN, Circuit Judges.

Jose Milanes-Sanchez appeals from the district court's order upon limited remand pursuant to *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc), concluding that it would not have imposed a materially different sentence

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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).

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

Milanes-Sanchez contends that the district court erred by not holding a resentencing hearing following this Court's remand pursuant to *Ameline*. Because the district court determined that it would not have imposed a materially different sentence had it known that the Sentencing Guidelines were advisory, Milanes-Sanchez is not entitled to a resentencing hearing. *See United States v. Combs*, 470 F.3d 1294, 1296-97 (9th Cir. 2006); *Ameline*, 409 F.3d at 1085. Therefore, we conclude that the district court did not err.

Moreover, the record indicates that the district court understood its discretion to impose a sentence outside of the Guidelines and did not treat the Guidelines range as a presumptive sentence. *See Combs*, 470 F.3d at 1297.

**AFFIRMED.**