

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 15 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JEREMIAH ROBERT WIBERG,

Defendant - Appellant.

No. 07-30305

D.C. No. CR-06-00063-RFC

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Richard F. Cebull, District Judge, Presiding

Argued and Submitted December 9, 2008
Portland, Oregon

Before: O'SCANNLAIN, GRABER and BYBEE, Circuit Judges.

We vacate the district court's judgment and remand in light of *United States v. Davenport*, 519 F.3d 940 (9th Cir. 2008). On remand, the district court should vacate either Wiberg's conviction for receipt or his conviction for possession of

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

child pornography, “allowing for it to be reinstated without prejudice if his other conviction should be overturned on direct or collateral review.” *Id.* at 948.

Any further appeals in this case shall be assigned to this panel.

REMANDED with instructions.