

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 30 2008

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHARLES C. MILLER,

Defendant - Appellant.

No. 07-30124

D.C. No. CR-97-00051-003-JCC

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
John C. Coughenour, District Judge, Presiding

Submitted December 17, 2008**

Before: GOODWIN, WALLACE and RYMER, Circuit Judges.

Charles C. Miller appeals from the 36-month sentence imposed upon
revocation of supervised release. We have jurisdiction pursuant to 28 U.S.C.

* 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).

§ 1291, and we affirm.

Miller contends that the district court erred at sentencing by failing to provide an adequate explanation for his above-Guidelines range sentence, by basing his sentence on clearly erroneous facts, and by failing to consider the Sentencing Guidelines range. We conclude that the district court did not commit procedural error. *See United States v. Carty*, 520 F.3d 984, 992–93, 996 (9th Cir. 2008) (en banc); *United States v. Leonard*, 483 F.3d 635, 637 (9th Cir. 2006). To the extent that Miller also contends that the district court erred by failing to first calculate the Sentencing Guidelines range on the record, we conclude that any error did not affect Miller’s substantial rights. *See United States v. Knows His Gun*, 438 F.3d 913, 918 (9th Cir. 2006); *United States v. Dallman*, 533 F.3d 755, 762 (9th Cir. 2006).

Miller also contends that his sentence is substantively unreasonable in light of the applicable 18 U.S.C. § 3553(a) factors. We conclude that Miller’s sentence is substantively reasonable. *See Carty*, 520 F.3d at 993; *United States v. Simtob*, 485 F.3d 1058, 1061–1063 (9th Cir. 2007).

AFFIRMED.