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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>AMBER LATREASE MITCHELL,</p> <p>Defendant - Appellant.</p>

No. 08-10024

D.C. No. CR-04-00006-EJG

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Edward J. Garcia, District Judge, Presiding

Submitted December 17, 2008**

Before: GOODWIN, WALLACE, and TROTT, Circuit Judges.

Amber Latrease Mitchell appeals from the 63-month sentence imposed following a remand for resentencing. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

* 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).

Mitchell contends that the district court's reimposition of the same 63-month sentence on remand violates her due process right against vindictive sentencing. This contention fails because there is no presumption of vindictiveness when there is no net increase in punishment. *See United States v. Bay*, 820 F.2d 1511, 1513 (9th Cir. 1987); *see also United States v. Hagler*, 709 F.2d 578, 579 (9th Cir. 1983).

Mitchell also contends that the sentence is unreasonable because the district court failed to consider mitigating evidence presented on her behalf, and mistakenly relied on the probation officer's recommendation from the original presentence investigation report. We conclude that the district court did not procedurally err, and that the sentence is substantively reasonable. *See Gall v. United States*, 128 S. Ct. 586, 596-97 (2007); *see also United States v. Carty*, 520 F.3d 984, 991-94 (9th Cir. 2008) (en banc).

AFFIRMED.