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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NOT FOR PUBLICATION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>RUBEN LESLIE MOQUINO,</p> <p>Defendant - Appellant.</p>
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No. 06-10291

D.C. No. CR-02-01168-DGC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David G. Campbell, District Judge, Presiding

Submitted January 13, 2009**

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

Ruben Leslie Moquino appeals from the district court's decision, following a limited remand under *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir.

* 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).

2005) (en banc), that the sentence it imposed would not have been materially different had it known that the Sentencing Guidelines were advisory. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Moquino contends that the district court's decision not to resentence him was unreasonable because, upon remand, the district court did not consider the factors set forth in 18 U.S.C. § 3553(a). We conclude that the district court "properly understood the full scope of [its] discretion" following *United States v. Booker*, 543 U.S. 220 (2005). See *United States v. Combs*, 470 F.3d 1294, 1296-97 (9th Cir. 2006).

To the extent that Moquino also contends that his sentence is unreasonable because, at his original sentencing hearing, the district court failed to consider the § 3553(a) factors, that contention fails. Moquino has already received the remedy for an unpreserved claim of *Booker* error, see *Ameline*, 409 F.3d at 1084-85, and the district court's subsequent decision not to resentence him indicates that any error did not affect his substantial rights, see *United States v. Thornton*, 511 F.3d 1221, 1225 (9th Cir. 2008).

AFFIRMED.