

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

JAN 29 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICKY LEE SANDCRANE,

Defendant - Appellant.

No. 08-30006

D.C. No. CR-06-00126-JDS

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Montana  
Jack D. Shanstrom, District Judge, Presiding

Argued and Submitted November 17, 2008  
Seattle, Washington

Before: KOZINSKI, Chief Judge, B. FLETCHER and RAWLINSON, Circuit  
Judges.

Appellant Ricky Sandcrane (“Sandcrane”) appeals the denial of his motion at sentencing asserting that the 30 year mandatory sentencing provision of 18 U.S.C. § 2241(c) is unconstitutional as applied to him under the Equal Protection Clause and the Eighth Amendment. We review the district court’s determination

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

that 18 U.S.C. § 2241(c) was applied constitutionally to Sandcrane *de novo* and we affirm. *See United States v. Naghani*, 361 F.3d 1255, 1259 (9th Cir. 2004).

Section 2241(c), as applied to Sandcrane, does not violate the Equal Protection Clause, as it does not discriminatorily classify Native Americans on its face. *See City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Nor does any disproportionate impact of Section 2241 on Native Americans result from discrimination. *See Washington v. Davis*, 426 U.S. 229, 241 (1976). Any disproportionate impact Section 2241 has on Native Americans simply reflects the different treatment of criminals under the Major Crimes Act who commit crimes in a federal enclave. *See United States v. LeMay*, 260 F.3d 1018, 1030 (9th Cir. 2001). The federal government's exercise of special jurisdiction over Native American affairs through the Major Crimes Act also cannot form a basis for an Equal Protection Clause violation. *See United States v. Antelope*, 430 U.S. 641, 646 (1977). Therefore, we apply rational basis review to Section 2241, to determine whether "it bears a reasonable relationship to a legitimate governmental interest." *Le May*, 260 F.3d at 1031. The deterrence of sexual crimes against children is certainly a legitimate governmental interest. Section 2241 is reasonably related to furthering that goal through the imposition of an increased penalty for such crimes.

Further, the application of Section 2241 to Sandcrane does not constitute cruel and unusual punishment under the Eighth Amendment. Under the Eighth Amendment our analysis focuses on whether the “criminal sentence [is] proportionate to the crime for which the defendant has been convicted.” *Solem v. Helm*, 463 U.S. 277, 290 (1983). Our threshold inquiry “look[s] to the gravity of the offense and the harshness of the penalty.” *Id.* at 290-91. We proceed beyond this inquiry “only . . . ‘in the rare case in which a threshold comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality.’” *United States v. Harris*, 154 F.3d 1082, 1084 (9th Cir. 1998) (quoting *Harmelin v. Michigan*, 501 U.S. 957, 1005 (1991) (Kennedy, J., concurring)). We find no such gross disproportion here. This court has generally recognized the grave harm resulting from sexual crimes relating to children. *See United States v. Meiners*, 485 F.3d 1211, 1213 (9th Cir. 2007). The extreme young age of the victim in this case and the details of the crime render Sandcrane’s offense particularly serious. The Supreme Court has found constitutional longer sentences for crimes of lesser gravity committed by first-time offenders. *See Harmelin*, 501 U.S. at 961; *Hutto v. Davis*, 454 U.S. 370, 374 (1982).

**AFFIRMED**