

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 24 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN PAUL JONES,

Defendant - Appellant.

No. 08-10164

D.C. No. 1:06-cr-00332-JMS-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
J. Michael Seabright, District Judge, Presiding

Argued and Submitted February 9, 2009
Honolulu, Hawaii

Before: REINHARDT, BRUNETTI and THOMAS, Circuit Judges.

We affirm the district court's exercise of its discretion under 18 U.S.C. § 3553(a) to impose a sentence of ninety-six months. The defendant's extensive and escalating criminal history, as well as the particular aspects of the crime at issue in this case, supports the district court's conclusion that a sentence greater than that

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

recommended by the now advisory Sentencing Guidelines was required. The defendant's argument with respect to "double counting" relies on an outmoded and overruled understanding of federal sentencing law that is predicated on pre-*Booker* precedents that do not apply to the instant case. Under *United States v. Booker*, 543 U.S. 220 (2005), the sentence was reasonable and devoid of procedural error. Accordingly, the sentence is **AFFIRMED**.