

United States Court of Appeals
For the Eighth Circuit

No. 12-2847

United States of America

Plaintiff - Appellee

v.

Michael William Sherman

Defendant - Appellant

Appeal from United States District Court
for the District of Minnesota - St. Paul

Submitted: November 27, 2012

Filed: December 4, 2012

[Unpublished]

Before MURPHY, ARNOLD, and SMITH, Circuit Judges.

PER CURIAM.

Michael Sherman pleaded guilty to producing child pornography, in violation of 18 U.S.C. § 2251(a) and (e). The presentence report calculated a Guidelines sentence

of 360 months in prison, the statutory maximum. The district court¹ varied downward, imposing a 300-month prison term.

On appeal, Sherman argues that the sentence is substantively unreasonable because the Guidelines, as applied to child pornography cases, lack an empirical basis upon which to formulate an appropriate sentence under 18 U.S.C. § 3553(a). This court has already rejected such an argument. See, e.g., United States v. Jones, 563 F.3d 725, 730 (8th Cir. 2009) (assuming sentencing court may disregard child-pornography Guidelines on policy grounds does not mean court must disagree with Guidelines, whether it reflects policy judgment of Congress or Commission’s “characteristic” empirical approach).

We conclude that the sentence is not unreasonable. See United States v. Moore, 581 F.3d 681, 684 (8th Cir. 2009) (per curiam) (where district court has sentenced defendant below advisory Guidelines range, it is nearly inconceivable that court abused its discretion in not varying downward further). Accordingly, we affirm.

¹The Honorable Ann D. Montgomery, United States District Judge for the District of Minnesota.