

OCT 08 2010

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RONALD E. SMITH,

Defendant - Appellant.

No. 09-30357

D.C. No. 1:04-cr-00087-RFC-5

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Richard F. Cebull, Chief District Judge, Presiding

Submitted October 6, 2010**
Seattle, Washington

Before: **KOZINSKI**, Chief Judge, **THOMAS** and **M. SMITH**, Circuit
Judges.

The district court considered the correct guideline range and adequately explained its decision to impose a stricter sentence. Federal Rule of Criminal Procedure 32(h) does not apply to the variance. Irizarry v. United States, 553 U.S.

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

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

708, 714 (2008). Even if it did, the government's re-sentencing memorandum gave the defendant adequate notice of the grounds for lengthening his sentence.

See Fed. R. Crim. P. 32(h); cf. United States v. Cruz-Perez, 567 F.3d 1142, 1147 (9th Cir. 2009).

AFFIRMED.