

JAN 05 2011

MOLLY C. DWYER, CLERK
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NOT FOR PUBLICATION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>MATTHEW ALLEN EATON,</p> <p>Defendant - Appellant.</p> |
|---|

No. 10-50162

D.C. No. 3:09-cr-03366-IEG

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, Chief District Judge, Presiding

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and CLIFTON, Circuit Judges.

Matthew Allen Eaton appeals from the 27-month sentence imposed following his guilty-plea conviction for conspiracy to transport stolen property in interstate and foreign commerce, in violation of 18 U.S.C. §§ 371 and 2314. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* 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).

Eaton contends that the district court erred by imposing a two-level upward adjustment under U.S.S.G. § 3B1.4 for using a minor to commit a crime. The record reflects that the district court did not clearly err in finding that Eaton affirmatively used his children in the conspiracy. *See United States v. Castro-Hernandez*, 258 F.3d 1057, 1060-61 (9th Cir. 2001).

AFFIRMED.