

JUL 03 2012

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NOT FOR PUBLICATION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.

JAMES HISBADHORSE,

Defendant - Appellant.

No. 11-30316

D.C. No. 1:10-cr-00111-RFC

MEMORANDUM*

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

Submitted June 26, 2012**

Before: SCHROEDER, HAWKINS, and GOULD, Circuit Judges.

James Hisbadhorse appeals from the 360-month sentence imposed following his guilty-plea conviction for aggravated sexual abuse, in violation of 18 U.S.C. §§ 1153(a), 2241(c), and abusive sexual contact, in violation of 18 U.S.C.

* 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). Accordingly, Hisbadhorse's request for oral argument is denied.

§§ 1153(a), 2244(a)(5). We have jurisdiction under 28 U.S.C. § 1291, and we affirm but remand to the district court to correct a clerical error in the judgment.

Hisbadhorse contends that the district court abused its discretion by imposing a sentence greater than necessary under the 18 U.S.C. § 3553(a) factors, and by imposing the sentence to run consecutively to Hisbadhorse's undischarged state sentence. The district court did not abuse its discretion. The sentence, though lengthy, is substantively reasonable in light of the totality of the circumstances and the sentencing factors set forth in section 3553(a). *See* 18 U.S.C. § 3584; U.S.S.G. § 5G1.3(c); *Gall v. United States*, 552 U.S. 38, 51 (2007).

We remand to the district court with instructions to amend the judgment to delete reference to 18 U.S.C. § 2241(a)(5) and replace it with 18 U.S.C. § 2244(a)(5).

AFFIRMED; REMANDED to correct the judgment.