

NOV 19 2012

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NOT FOR PUBLICATION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 style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>KEVIN KALLER WRIGHT, a.k.a. Kevin Wright, a.k.a. Yahl,</p> <p style="text-align: center;">Defendant - Appellant.</p> |
|---|

No. 11-50405

D.C. No. 2:09-cr-01004-MMM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Margaret M. Morrow, District Judge, Presiding

Submitted November 13, 2012**

Before: CANBY, TROTT, and W. FLETCHER, Circuit Judges.

Kevin Kaller Wright appeals from the 84-month sentence imposed following his guilty-plea conviction for conspiracy to advertise, transport, receive, distribute, solicit, and possess child pornography, in violation of 18 U.S.C. §§ 2251(d)(1)(A),

* 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).

(e); and 2252A(a), (b)(1)(2). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Wright contends that the district court committed legal error in considering his request for a role adjustment pursuant to U.S.S.G. § 3B1.2(a). The record reflects that the court properly considered Wright's conduct as compared to the other participants in the conspiracy in assessing whether to grant the adjustment. *See United States v. Cantrell*, 433 F.3d 1269, 1283 (9th Cir. 2006). Contrary to Wright's contention, the district court did not state that it was precluded from granting the adjustment because it had already granted him a reduction under the Guidelines for not distributing child pornography, nor did it otherwise legally err. Furthermore, because Wright failed to meet his burden of proving that he was substantially less culpable than his co-conspirators, the court did not clearly err in denying the adjustment. *See id.* at 1282-83.

Wright next contends that the district court made factual findings that were unsupported by the record. Contrary to Wright's contention, the district court did not find that he solicited others to join the Quest4More message board. Furthermore, the court's finding that Wright encouraged members to post child pornography was not clearly erroneous. *See United States v. Holt*, 510 F.3d 1007, 1010 (9th Cir. 2007).

AFFIRMED.