

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 20 2015

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICHARD ALBERT WUERFEL,

Defendant - Appellant.

No. 14-50305

D.C. No. 2:11-cr-00262-GHK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George H. King, Chief Judge, Presiding

Submitted October 14, 2015**

Before: SILVERMAN, BYBEE, and WATFORD, Circuit Judges.

Richard Albert Wuerfel appeals from the district court's judgment and challenges the 72-month sentence imposed following his guilty-plea conviction for possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B). 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).

Wuerfel contends that the district court erred by failing to consider his sentencing arguments and the 18 U.S.C. § 3553(a) factors adequately, and to explain the sentence. This claim fails. The record reflects that the court considered the section 3553(a) factors and Wuerfel's arguments, and thoroughly explained the sentence. *See United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc).

Wuerfel next contends that the district court erred by applying an obstruction of justice enhancement under U.S.S.G. § 3C1.1. In light of the record, including Wuerfel's statement at the sentencing hearing, the district court did not clearly err in concluding that Wuerfel acted willfully to obstruct justice. *See United States v. Gardner*, 988 F.2d 82, 83 (9th Cir. 1993) (per curiam).

Lastly, Wuerfel contends that his sentence is substantively unreasonable. He argues that the Guidelines range was unreasonable in view of the mitigating factors surrounding his decision to abscond and the alleged excessiveness of the child pornography sentencing enhancements. The district court took into account Wuerfel's policy challenge to the child pornography Guidelines and his mitigating circumstances. The below-Guidelines sentence is substantively reasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

AFFIRMED.