

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 23 2018

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DUMAKA HAMMOND,

Defendant-Appellant.

No. 17-10340

D.C. No. 4:16-cr-00102-JD-1

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

DUMAKA HAMMOND,

Defendant-Appellee.

No. 17-10403

D.C. No. 4:16-cr-00102-JD-1

Appeal from the United States District Court
for the Northern District of California
James Donato, District Judge, Presiding

Argued and Submitted August 14, 2018
San Francisco, California

Before: O'SCANNLAIN and BEA, Circuit Judges, and STEARNS,** District

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Judge.

Dumaka Hammond appeals the district court's denial of his motion to suppress evidence obtained pursuant to a warrant issued by a magistrate judge in the Eastern District of Virginia authorizing use of a Network Investigative Technique (NIT) during the investigation of a child pornography website and its users. The government cross-appeals the district court's imposition of a 108-month sentence that fell below the federal mandatory minimum. Because the facts are known to the parties, we repeat them only as necessary to explain our decision.

I

The district court did not err in denying Hammond's motion to suppress evidence. Although the warrant violated Federal Rule of Criminal Procedure 41(b), suppression is not required because the good faith exception to the exclusionary rule applies. *See United States v. Henderson*, No. 17-10230, – F.3d – (9th Cir. 2018).

II

The district court did not err in declining to apply the federal ten-year mandatory minimum. Hammond pled guilty to one count of possession of child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B). The government argues

** The Honorable Richard G. Stearns, United States District Judge for the District of Massachusetts, sitting by designation.

that the district court should have applied the mandatory minimum because Hammond was previously convicted for possession of child pornography under state law, California Penal Code § 311.11(a). The usual, elements-based categorical approach applies to determine whether prior convictions under state law “relate to” child pornography such that the federal mandatory minimum, 18 U.S.C. § 2252(b)(2), applies. *See United States v. Reinhart*, 893 F.3d 606, 610 (9th Cir. 2018). The California statute for possession of child pornography, section 311.11(a), is not a categorical match for the federal child pornography provision. *See Chavez-Solis v. Lynch*, 803 F.3d 1004, 1008 (9th Cir. 2015).

AFFIRMED.