

FILED

APR 11 2018

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NOT FOR PUBLICATION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-Appellant,

v.

NAKOMA JAMES POWELL,

Defendant-Appellee.

No. 17-30033

D.C. No. 1:16-cr-00030-BLW-1

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Idaho  
B. Lynn Winmill, Chief Judge, Presiding

Argued and Submitted March 5, 2018  
Seattle, Washington

Before: RAWLINSON, CLIFTON, and CHRISTEN, Circuit Judges.

The Government appeals the calculation of the sentence imposed by the district court on Nakoma James Powell, specifically challenging Powell's base offense level under U.S.S.G. § 2K2.1. We affirm.

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

In the sentencing memoranda and at the sentencing hearing itself, the Government and Powell both made arguments citing to both the 2015 and 2016 Sentencing Guidelines. Ultimately, the district court adopted the Probation Office's Presentence Investigation Report, which applied the 2016 Sentencing Guidelines.

The Government argues that the district court applied the 2015 Sentencing Guidelines, and that the district court should have imposed a sentencing enhancement under § 2K2.1 because Powell's relevant state conviction was a categorical crime of violence. On appeal, the Government does not address the 2016 Sentencing Guidelines. "We review only issues which are argued specifically and distinctly in a party's opening brief" and arguments are considered waived if a party "fail[s] to present a specific, cogent argument for our consideration." *Greenwood v. F.A.A.*, 28 F.3d 971, 977 (9th Cir. 1994). Because the district court adopted the Presentence Investigation Report which explicitly applied the 2016 Sentencing Guidelines, and because the Government waived any argument based on the 2016 Sentencing Guidelines, we affirm.

**AFFIRMED.**