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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>SHAUN ROBERTS,</p> <p>Defendant - Appellant.</p>
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No. 06-10574

D.C. No. CR-05-00567-JSW

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Jeffrey S. White, District Judge, Presiding

Submitted January 13, 2009\*\*

Before: O'SCANNLAIN, BYBEE and CALLAHAN, Circuit Judges.

Shaun Roberts appeals from the 804-month sentence imposed following his jury-trial conviction for two counts of armed bank robbery, in violation 18 U.S.C.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

§ 2113(a), (d), and two counts of use of a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Roberts contends that this case must be remanded because the district court failed to provide notice of its intent to sentence him outside of the range suggested by the United States Sentencing Guidelines (“Guidelines”), as required by Federal Rule of Criminal Procedure 32(h). Because the above-Guidelines sentence in this case resulted from a variance pursuant to the sentencing factors in 18 U.S.C. § 3553(a), and not a departure under the Guidelines, notice was not required. *Irizarry v. United States*, 128 S. Ct. 2198, 2202-04 (2008); *see also United States v. Evans-Martinez*, 530 F.3d 1164, 1169 (9th Cir. 2008).

Roberts further contends that the district court erred by: (1) relying on factors in its § 3553(a) analysis that already were addressed by the Guidelines; (2) misapplying certain § 3553(a) factors; and (3) imposing a sentence that was greater than necessary to accomplish the purposes set forth in § 3553(a).

Upon review of the record, we conclude that the district court did not procedurally err, and that the sentence is substantively reasonable. *See Gall v. United States*, 128 S. Ct. 586, 596-97 (2007); *see also United States v. Cabaccang*, 481 F.3d 1176, 1185-86 (9th Cir. 2007); *United States v. Mohamed*, 459 F.3d 979, 987-89 (9th Cir. 2006).

**AFFIRMED.**