

JUN 22 2009

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NOT FOR PUBLICATION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 - Appellee,

v.

GERALD ALAN SHERMAN,

Defendant - Appellant.

No. 08-30272

D.C. No. 2:05-cr-00181-JCC

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
John C. Coughenour, District Judge, Presiding

Submitted June 16, 2009**

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Gerald Alan Sherman appeals from the 84-month sentence imposed, on resentencing, following his jury-trial conviction for wire fraud in violation of 18 U.S.C. § 1343, mail fraud in violation of 18 U.S.C. § 1341, and securities fraud

* 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).

in violation of 15 U.S.C. § 78ff(a), 78j(b), and 17 C.F.R. § 240.10b. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Sherman contends that the district court procedurally erred by failing to consider the 18 U.S.C. § 3553(a) factors at his resentencing hearing. This contention fails because, as the record shows, both parties presented arguments related to the § 3553(a) factors at resentencing, and the district court, after listening to the arguments, imposed the same sentence it imposed at the original sentencing. *See Rita v. United States*, 127 S. Ct. 2456, 2468-69 (2007). Even assuming error, we conclude that Sherman has failed to show that his substantial rights were affected. *See United States v. Dallman*, 533 F.3d 755, 761-62 (9th Cir. 2008).

Sherman further contends that his sentence is substantively unreasonable. In light of the totality of the circumstances, we conclude that Sherman's sentence is not substantively unreasonable. *See Gall v. United States*, 128 S. Ct. 586, 597 (2007).

AFFIRMED.