

APR 15 2010

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NOT FOR PUBLICATION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.

JOHN WALTER TEMPLE,

Defendant - Appellant.

No. 05-50120

D.C. No. 02-cr-00344-AHS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Alicemarie H. Stotler, District Judge, Presiding

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

John Walter Temple appeals from the restitution order imposed following his guilty-plea conviction for mail fraud and aiding and abetting, in violation of 18 U.S.C. §§ 2 and 1341. We have jurisdiction pursuant to 28 U.S.C. § 1291, and

* 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).

we affirm.

Temple contends the district court erred by failing to acknowledge its discretion under 18 U.S.C. § 3664(h) to apportion liability between Temple and his co-defendant. The record shows that the district court did not err in this regard. *See United States v. Booth*, 309 F.3d 566, 576 (9th Cir. 2002); *see also United States v. Mills*, 991 F.2d 609, 611-12 (9th Cir. 1993). Further, the district court did not abuse its discretion by holding Temple jointly and severally liable with his co-defendant for the total amount of restitution. *See Booth*, 309 F.3d at 576; *see also* § 3664(h).

AFFIRMED.