

OCT 29 2012

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NOT FOR PUBLICATION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.

PETER JERALD FROMMER,

Defendant - Appellant.

No. 11-50146

D.C. No. 2:10-cr-00109-GW-1

MEMORANDUM*

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

Submitted October 12, 2012**
Pasadena, California

Before: KLEINFELD and McKEOWN, Circuit Judges, and QUIST, Senior
District Judge.***

* 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).

*** The Honorable Gordon J. Quist, Senior District Judge for the U.S. District Court for Western Michigan, sitting by designation.

Peter Frommer appeals his sentence of 108 months. We reject his arguments and affirm. We have jurisdiction under 18 U.S.C. § 3742(a).

We review whether the district court made sufficient factual findings de novo. U.S. v. Forrester, 616 F.3d 929, 934 (9th Cir. 2010). We review substantive reasonableness of the sentence for abuse of discretion. Gall v. U.S., 552 U.S. 38, 51 (2007). Frommer failed to object to the district judge's treatment of the sentencing factors below, so we review for plain error. U.S. v. Valencia-Barragan, 608 F.3d 1103, 1108 (9th Cir. 2010).

The district court made sufficient findings of fact and resolved the factual disputes by adopting the prosecution's position. U.S. v. Karterman, 60 F.3d 576 (9th Cir. 1995). Considering the manner in which Frommer committed the crime and the severe victim impact, the district court did not abuse its discretion by sentencing above the guidelines. Finally, the district court did not plainly err in considering the necessary sentencing factors. U.S. v. Daniels, 541 F.3d 915, 922 (9th Cir. 2008).

AFFIRMED