

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 08 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRIAN MARTIN, AKA Brian Scott
Martin,

Defendant - Appellant.

No. 12-50311

D.C. No. 2:07-cr-01205-CBM-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Consuelo B. Marshall, Senior District Judge, Presiding

Submitted June 3, 2013**
Pasadena, California

Before: TROTT and W. FLETCHER, Circuit Judges, and STEIN, 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 Sidney H. Stein, District Judge for the U.S. District Court for the Southern District of New York, sitting by designation.

Brian Martin appeals his 87-month sentence (including supervised release, restitution, and special assessments) on remand, we affirm.

The district court's factual findings that Martin demonstrated an intent and preparation to carry out his threats against Elvira Garay and Jonathan Dean with the ability to do so are well supported by the evidence. Accordingly, the court's imposition of sentencing enhancements was appropriate.

Martin's argument that his offenses should have been grouped pursuant to U.S.S.G. § 3D1.1(a)(1) because they arose from one common scheme is wrong. His scheme involved multiple victims. Therefore, grouping is not appropriate. Martin's arguments based on out-of-circuit precedent are inapposite.

Finally, contrary to his argument, Martin's 87-month sentence was substantively reasonable when measured against the aggressive and extortionate dimensions of his criminal conduct plus his past history.

AFFIRMED.