

AUG 02 2013

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NOT FOR PUBLICATION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.

GEORGE HENRY JARAMILLO,

Defendant - Appellant.

No. 12-50072

D.C. No. 8:07-cr-00036-AG

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Andrew J. Guilford, District Judge, Presiding

Submitted July 24, 2013**

Before: ALARCÓN, CLIFTON, and CALLAHAN, Circuit Judges.

George Henry Jaramillo appeals from the district court's judgment and challenges the \$50,000 fine imposed following his guilty-plea conviction for willful filing of a false tax return, in violation of 26 U.S.C. § 7206(1). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* 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).

Jaramillo contends that the district court's imposition of the \$50,000 fine was vindictive and therefore violates his right to due process. We review de novo a claim that the imposition of a sentence after a successful appeal violates a defendant's right to due process. *See United States v. Garcia-Guizar*, 234 F.3d 483, 489 n.2 (9th Cir. 2000). Jaramillo's contention fails because there is no presumption of vindictiveness when there is no net increase in punishment. *See United States v. Bay*, 820 F.2d 1511, 1513 (9th Cir. 1987). Further, Jaramillo has not shown that the court was motivated by vindictiveness. Rather, the record reflects that the district court based the sentence on proper sentencing factors. *See* 18 U.S.C. §§ 3553(a) and 3572(a).

AFFIRMED.