

MAY 21 2014

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NOT FOR PUBLICATION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.

GARUDADAS WAWERO MARSHALL,

Defendant - Appellant.

No. 13-10518

D.C. No. 3:13-cr-00009-RCJ

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, Presiding

Submitted May 13, 2014**

Before: CLIFTON, BEA, and WATFORD, Circuit Judges.

Garudadas Wawero Marshall appeals from the district court's judgment and challenges the fine imposed following his guilty-plea conviction for being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).

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).

Marshall contends that the district court erred by finding that he had the ability to pay the \$1,000 fine imposed. We review for clear error the district court's determination that a defendant is able to pay a fine. *See United States v. Orlando*, 553 F.3d 1235, 1240 (9th Cir. 2009). Even accepting that Marshall was indigent at the time of sentencing, he failed to demonstrate his inability to pay because he presented no evidence that he would be unable to participate in an earnings program while incarcerated or otherwise pay the fine in the future. Therefore, the district court did not err by imposing the below-Guidelines fine. *See id.* (“[T]he court may fine a currently indigent defendant, if it finds that he has earning capacity to pay the fine in the future”).

AFFIRMED.