

JUN 27 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NOT FOR PUBLICATION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.

THOMAS EDWARD BAYE,

Defendant - Appellant.

No. 13-10531

D.C. No. 3:12-cr-00115-RCJ

MEMORANDUM*

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

Submitted June 25, 2014**

Before: HAWKINS, TALLMAN, and NGUYEN, Circuit Judges.

Thomas Edward Baye appeals from the district court's judgment and challenges the 144-month sentence imposed following his guilty-plea conviction for bank robbery with a dangerous weapon, in violation of 18 U.S.C. § 2113(a), (d). 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).

Baye contends that the district court procedurally erred at sentencing by failing to (1) use the advisory Guidelines as an initial benchmark; (2) keep the advisory Guidelines range in mind during the entire sentencing hearing; and (3) explain adequately the upward variance. We review for plain error, *see United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010), and find none. The record reflects that the district court properly used the advisory Guidelines range as an initial benchmark and kept the range in mind while weighing the 18 U.S.C. § 3553(a) sentencing factors. *See United States v. Autery*, 555 F.3d 864, 871-72 (9th Cir. 2009). Further, the district court sufficiently explained the reasons for the significant upward variance, including Baye's lengthy criminal history and the need for deterrence. *See United States v. Carty*, 520 F.3d 984, 991-92 (9th Cir. 2008) (en banc).

AFFIRMED.