

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCTOBER 20 2014

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHANNES VERMAAK,

Defendant - Appellant.

No. 13-50096

D.C. No. 8:10-cr-00225-CJC-1

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHANNES VERMAAK,

Defendant - Appellant.

No. 13-50097

D.C. No. 8:10-cr-00224-CJC-1

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHANNES VERMAAK,

Defendant - Appellant.

No. 13-50240

D.C. No. 8:10-cr-00224-CJC-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHANNES VERMAAK,

Defendant - Appellant.

No. 13-50241

D.C. No. 8:10-cr-00225-CJC-1

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

Argued and Submitted October 7, 2014
Pasadena, California

Before: TALLMAN, BEA, and FRIEDLAND, Circuit Judges.

Johannes Vermaak appeals his 84-month sentence for mail fraud. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The district court did not plainly err in its consideration of aggravating factors at sentencing. To the extent the district court considered Vermaak's inability to pay restitution, it did so only as part of its analysis of victim impact. This is permissible

under *United States v. Rangel*, 697 F.3d 795, 803 (9th Cir. 2012), and 18 U.S.C. § 3553(a).

Nor did the district court plainly err by failing to explain more thoroughly its above-Guidelines sentence. The district court considered the appropriate sentencing factors and provided a sufficient explanation for the upward variance to permit meaningful appellate review. *See United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc).

Finally, the 84-month sentence was not substantively unreasonable. The aggravating factors identified by the sentencing court sufficiently justify the upward variance, so the sentence was not an abuse of discretion. *See id.* at 991-93.

AFFIRMED.