

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 20 2015

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DULTON EARL JOHNSON,

Defendant - Appellant.

No. 14-30247

D.C. No. 4:13-cr-00227-BLW

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, Chief Judge, Presiding

Submitted October 14, 2015**

Before: SILVERMAN, BYBEE, and WATFORD, Circuit Judges.

Dulton Earl Johnson appeals from the district court's judgment and challenges the 70-month sentence imposed following his guilty-plea conviction for assault resulting in serious bodily injury committed within Indian Country, in violation of 18 U.S.C. §§ 113(a)(6) and 1153. We have jurisdiction under 28

* 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).

U.S.C. § 1291, and we affirm.

Johnson contends that the district court procedurally erred by failing to consider the 18 U.S.C. § 3553(a) sentencing factors adequately and address his argument for a within-Guidelines sentence. 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 considered Johnson's arguments and thoroughly explained its reasons for imposing the above-Guidelines sentence. *See United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc).

Johnson next contends that the sentence is substantively unreasonable. The district court did not abuse its discretion in imposing Johnson's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The above-Guidelines sentence is substantively reasonable in light of the section 3553(a) sentencing factors and the totality of the circumstances, including the troubling nature of the offense. *See Gall*, 552 U.S. at 51.

AFFIRMED.