

JUN 20 2016

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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FRANK GLENN LAMBERT,

Defendant - Appellant.

No. 15-30251

D.C. No. 2:14-cr-00170-TOR

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Thomas O. Rice, Chief Judge, Presiding

Submitted June 14, 2016\*\*

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

Frank Glenn Lambert appeals from the district court's judgment and challenges the \$2,000 fine imposed following his guilty-plea conviction for sexual abuse of a minor, in violation of 18 U.S.C. §§ 1153(a) and 2243(a). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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\* 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).

Lambert contends that the district court procedurally erred by not providing an adequate explanation for the fine imposed. We review for plain error, *see United States v. Hernandez-Arias*, 757 F.3d 874, 884 (9th Cir. 2014), and find none. The record reveals that the district court considered the fine range established by the Guidelines and Lambert's ability to pay and no further explanation was required. *See id.*

Lambert next contends that the \$2,000 fine is substantively unreasonable in light of his inability to pay it. The district court did not abuse its discretion in imposing the below-Guidelines fine, which is substantively reasonable in light of the 18 U.S.C. § 3572(a) factors and the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51 (2007). Even accepting that Lambert was indigent at the time of sentencing, he presented no evidence that he would be unable to participate in the earnings program while incarcerated or otherwise pay the fine in the future. *See United States v. Orlando*, 553 F.3d 1235, 1240 (9th Cir. 2009).

**AFFIRMED.**