

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 16 2018

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 17-50107

Plaintiff-Appellee,

D.C. No. 3:16-cr-00560-CAB

v.

MEMORANDUM*

JOSHUA D. KNAUP,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of California
Cathy Ann Bencivengo, District Judge, Presiding

Submitted February 13, 2018**

Before: LEAVY, FERNANDEZ, and MURGUIA, Circuit Judges.

Joshua D. Knaup appeals from the district court's judgment and challenges the 33-month sentence imposed following his guilty-plea convictions for two counts of wire fraud, in violation of 18 U.S.C. § 1343. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Knaup contends that the district court abused its discretion by imposing

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

sentence based on internally inconsistent factual findings. We disagree. The district court's remarks consistently reflect its finding that Knaup defrauded investors. The court's speculation that Knaup may have come to believe his misstatements was not inconsistent with that finding. Further, the 33-month sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including the need to provide just punishment for the offense. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

AFFIRMED.