

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 17 2018

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 17-10420

Plaintiff-Appellee,

D.C. No. 5:16-cr-00127-LHK

v.

MEMORANDUM*

GARY THORNHILL,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of California
Lucy H. Koh, District Judge, Presiding

Submitted May 15, 2018**

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

Gary Thornhill appeals from the district court's judgment and challenges the 60-month sentence imposed following his guilty-plea convictions for mail fraud and wire fraud, in violation of 18 U.S.C. §§ 1341 and 1343. 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 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).

Thornhill contends that the sentence is substantively unreasonable because it was premised on the district court's erroneous finding that Thornhill lied to his friends and relatives about the nature of the offense and his efforts to make restitution. The district court did not abuse its discretion in imposing Thornhill's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The record shows that the court imposed the sentence on the basis of several factors, and did not base the sentence on clearly erroneous factual findings. The above-Guidelines sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including Thornhill's longstanding and profitable business relationship with the victim. *See Gall*, 552 U.S. at 51.

AFFIRMED.