

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 18 2018

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 17-30150

Plaintiff-Appellee,

D.C. No. 2:16-cr-00277-EJL

v.

MEMORANDUM*

CHARLES RAY BARTKOWIAK,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Submitted May 15, 2018**

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

Charles Ray Bartkowiak appeals from the district court's judgment and challenges the 70-month sentence imposed following his guilty-plea conviction for bank robbery, in violation of 18 U.S.C. § 2113(a). 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).

Bartkowiak contends that his sentence is substantively unreasonable because the district court improperly presumed that the Guidelines range was reasonable, and placed undue weight on the Guidelines and the need for deterrence. The court did not abuse its discretion in imposing Bartkowiak's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The record shows that the court did not presume the reasonableness of the Guidelines range or place undue weight on any single sentencing factor. To the contrary, after evaluating several of the 18 U.S.C. § 3553(a) sentencing factors and the "mitigating circumstances that are not usually encountered in a case of this nature," the court imposed a sentence seven months below the Guidelines range. The below-Guidelines sentence is substantively reasonable in light of the section 3553(a) sentencing factors and the totality of the circumstances, including Bartkowiak's criminal history and the seriousness of the offense. *See Gall*, 552 U.S. at 51.

AFFIRMED.