

FILED

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CHRIS YOUNG YOO, a.k.a. Chris Yoo,

Defendant-Appellant.

No. 17-30168

D.C. No. 2:17-cr-00075-TSZ

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding

Submitted August 15, 2018**

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

Chris Young Yoo appeals from the district court's judgment and challenges the 108-month sentence imposed following his guilty-plea conviction for one count of wire fraud, in violation of 18 U.S.C. § 1343, and one count of making a false

* 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).

1 statement to the United States, in violation of 18 U.S.C. § 1001. We have
2 jurisdiction under 28 U.S.C. § 1291, and we vacate and remand for resentencing.

3 Yoo contends that the district court violated the Ex Post Facto Clause by
4 applying an amended version of the Sentencing Guidelines that did not go into
5 effect until after his offenses of conviction were complete. The government
6 concedes that we must vacate Yoo’s sentence and remand for resentencing.
7 Reviewing de novo, *see United States v. Forrester*, 616 F.3d 929, 934 (9th Cir.
8 2010), we agree.

9 The district court improperly concluded that the “the last date of the offense
10 of conviction” occurred after November 1, 2015. *See* U.S.S.G. § 1B1.11 cmt. n.2.
11 The wire fraud offense was “complete when the . . . wire [was] used”—on April
12 16, 2015. *United States v. Blitz*, 151 F.3d 1002, 1011 (9th Cir. 1998). Yoo’s
13 conduct after November 2015—while relevant to the sentencing range within a
14 particular version of the Guidelines—is immaterial to which version applies for ex
15 post facto purposes. *See* U.S.S.G. § 1B1.11 cmt. n.2; *Forrester*, 616 F.3d at 946-
16 48. Because the district court applied a version of the Guidelines that resulted in a
17 higher sentencing range than the version of the Guidelines that applied on the date
18 Yoo’s offenses of conviction were complete, we must vacate and remand for
19 resentencing. *See Peugh v. United States*, 569 U.S. 530, 544 (2013); *United States*
20 *v. Thomsen*, 830 F.3d 1049, 1070-71 (9th Cir. 2016). On remand, the district court

1 shall apply the 2014 Guidelines.

2 **VACATED and REMANDED for resentencing.**