

FILED

AUG 16 2019

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NOT FOR PUBLICATION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.

ALBERINO MAGI, AKA Ron Anderson,
AKA Robert Knowles, AKA Alberiono
Magi, AKA Rino, AKA Glen Ross, AKA
Robert Ross,

Defendant-Appellant.

No. 18-50020

D.C. No.
2:07-cr-01402-SJO-4

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
S. James Otero, District Judge, Presiding

Submitted August 14, 2019**
Pasadena, California

* 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).

Before: SCHROEDER and GRABER, Circuit Judges, and WATSON,^{***} District Judge.

Alberino Magi appeals the sentence imposed following his guilty plea for conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 371. Magi admitted to being a member of a fraudulent telemarketing scheme and was sentenced to 15 months' custody, three years' supervised release, and \$286,230 restitution to the victims.

Magi argues that the district court abused its discretion when calculating his sentencing guideline range and the restitution he owed. Although Magi contends that he is not liable for defrauding all of the victims because he did not rely on other telemarketers to execute the telemarketing scheme, the record clearly reflects that Magi and the telemarketers worked together.

An individual named Bellini obtained and distributed the names of potential victims to Magi. Magi contacted the victims by telephone and falsely informed them that they had won a large sum of money in a lottery, but needed to pay the taxes and administrative fees in order to collect their winnings. Magi and the other telemarketers worked in groups of two or more, playing different roles to convince victims to send money. For example, Magi's co-defendant Van Wade Bedford

^{***} The Honorable Michael H. Watson, United States District Judge for the Southern District of Ohio, sitting by designation.

made calls to a victim pretending to be Magi's supervisor. Bellini thereafter collected the funds and distributed them to Magi and the other telemarketers.

Magi is therefore liable for the fraudulent acts of the other telemarketers because he relied on them to make a sale and depended on the success of the entire scheme for his financial gain. *See United States v. Lloyd*, 807 F.3d 1128, 1143 (9th Cir. 2015). Accordingly, there was no error in the calculation of the guidelines range or restitution.

AFFIRMED.