

DEC 12 2014

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NOT FOR PUBLICATION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.

GARY TED AMES,

Defendant - Appellant.

No. 14-30007

D.C. No. 1:12-cr-00097-SPW

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Susan P. Watters, District Judge, Presiding

Submitted December 9, 2014**

Before: WALLACE, LEAVY, and BYBEE, Circuit Judges.

Gary Ted Ames appeals from the district court's judgment and challenges the 36-month sentence imposed following his jury-trial conviction for being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1).

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 9th Cir. R. 36-3.

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

Ames contends that the district court erred by failing to provide notice under Federal Rule of Criminal Procedure 32(h) of its intent to depart upwards. The record does not support Ames's contention that the district court applied an upward departure under U.S.S.G. § 4A1.3(a)(1). Instead, the court imposed an upward variance based on the 18 U.S.C. § 3553(a) factors; therefore, it was not required to give notice under Rule 32(h). *See Irizarry v. United States*, 553 U.S. 708, 714-16 (2008).

Ames next contends that his above-Guidelines sentence is substantively unreasonable. The district court did not abuse its discretion in imposing Ames's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). Ames's sentence, 12-months above the top of the advisory Guidelines range, is substantively reasonable in light of the totality of circumstances and the section 3553(a) sentencing factors, including the need to deter and the nature and circumstances of the offense. *See id.*

AFFIRMED.