

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 14 2017

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 15-50048

Plaintiff-Appellee,

D.C. No. 8:11-cr-00008-CJC

v.

MEMORANDUM*

JOHN CARL REYNOLDS,

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
Cormac J. Carney, District Judge, Presiding

Submitted March 8, 2017**

Before: LEAVY, W. FLETCHER, and OWENS, Circuit Judges.

John Carl Reynolds appeals from the district court's judgment and challenges the 51-month sentence imposed following his guilty-plea conviction for aiding and abetting and mail fraud, in violation of 18 U.S.C. §§ 2(a) and 1341. We dismiss in part and affirm in part.

* 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).

Reynolds contends that the district court erred by applying a sentencing enhancement for his abuse of a position of trust under U.S.S.G. § 3B1.3. The government contends that this claim is barred by a valid appeal waiver. Reviewing de novo, we conclude that the provision of the appeal waiver stating that Reynolds waives the right to appeal “the procedures and calculations used to determine . . . the sentence” unambiguously encompasses this claim. *See United States v. Harris*, 628 F.3d 1203, 1205-06 (9th Cir. 2011).

Reynolds next contends that his sentence is substantively unreasonable. The district court did not abuse its discretion in imposing Reynolds’s sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The high-end sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) factors and the totality of the circumstances, including the nature of the offense and Reynolds’s history of fraudulent behavior. *See Gall*, 552 U.S. at 51.

DISMISSED in part; AFFIRMED in part.