

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 14 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 21-10280

Plaintiff-Appellee,

D.C. No.

v.

4:05-cr-00125-DCB-BPV-2

SERGIO ANTONIO HARO,

MEMORANDUM*

Defendant,

and

ERIN MICHELLE CARRILLO,

Real-party-in-interest-
Appellant.

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Submitted November 17, 2022**
Phoenix, Arizona

Before: BYBEE, OWENS, and COLLINS, Circuit Judges.

* 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).

Attorney Erin Carrillo, who represented defendant Sergio Haro at resentencing, appeals from the district court's order imposing \$1,000 in sanctions on her under District of Arizona Local Rule 83.1(f) for violating the court's order to timely file a sentencing memorandum and for failing to be prepared at the resentencing hearing. We review for abuse of discretion a district court's imposition of sanctions on an attorney for violating a local rule. *See Toombs v. Leone*, 777 F.2d 465, 471 (9th Cir. 1985). As the parties are familiar with the facts, we do not recount them here. We vacate the sanctions order.

In *Zambrano v. City of Tustin*, 885 F.2d 1473 (9th Cir. 1989), we discussed the limits of a district court's discretion to impose a monetary sanction on counsel for violating the local rules. We explained that "any sanction imposed must be proportionate to the offense and commensurate with principles of restraint and dignity inherent in judicial power," which "includes a responsibility to consider the usefulness of more moderate penalties before imposing a monetary sanction." *Id.* at 1480. We also noted that "lectures in open court are often sufficient to press home the significance of local rules, particularly for a first offense." *Id.* at 1480 n.24. And we held that "absent grossly negligent, reckless, or willful conduct, monetary penalties such as jury costs or judicial sanctions cannot be fairly levied against counsel for a violation of the local rules." *Id.* at 1480.

Here, the monetary sanction imposed on Carrillo was disproportionate to her

conduct. She did not deliberately or repeatedly flout court orders or rules, but rather filed an unopposed motion for a continuance before the sentencing memorandum was due because she needed more time to adequately prepare and would be in trial the week of the deadline. After the court denied her initial request for a continuance, Carrillo's email response to the judicial assistant again tried to make the court aware that she was not prepared to proceed with sentencing and would be renewing her motion to seek a continuance. Although perhaps Carrillo could have planned ahead more effectively or used a more deferential tone in her email, her conduct did not warrant a monetary sanction. The district court made no finding that Carrillo's conduct was "grossly negligent, reckless, or willful," and the record would not support such a finding. *Id.*

Accordingly, we conclude that the district court abused its discretion in imposing a \$1,000 sanction on Carrillo. As in *Zambrano*, "remand is not necessary because a sufficient understanding of the issues may be gleaned from the record without the aid of separate findings." *Id.* at 1484 n.32.

Each party shall bear its own costs on appeal.¹

VACATED.

¹ Carrillo's Unopposed Request for Judicial Notice is GRANTED. 9th Cir. Dkt. No. 9.