

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 6 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LAWRENCE WILLIAMS, AKA Mikael
Youf Azeem,

Defendant-Appellant.

No. 21-30216

D.C. No.

2:20-cr-00171-TOR-1

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Thomas O. Rice, District Judge, Presiding

Argued and Submitted October 4, 2022
Portland, Oregon

Before: OWENS and MILLER, Circuit Judges, and EZRA,** District Judge.

Lawrence Williams, also known as Mikael Youf Azeem (“Defendant”),
pleaded guilty to wire fraud on May 6, 2021. At sentencing, the district court
imposed a 40-month sentence for the wire fraud charge and a 10-month sentence

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The Honorable David A. Ezra, United States District Judge for the
District of Hawaii, sitting by designation.

for violating the conditions of his supervised release. The district court also raised for the first time at sentencing the possibility of an enhancement under U.S.S.G. § 2B1.1(b)(9) based on a misrepresentation that Defendant was acting on behalf of a charitable organization. The district court further added an upward variance and an upward criminal history departure under U.S.S.G. § 4A1.3(a)(1) given the seriousness of Defendant's prior crimes, his dangerousness to the public, and his likelihood of recidivating.

Defendant now appeals his sentence, alleging that (1) the district court failed to give notice of an enhancement to the Sentencing Guidelines as required under Federal Rule of Criminal Procedure 32; (2) the district court committed procedural error by (a) failing to address key arguments from the defense, (b) calculating an upward departure under § 4A1.3 for underrepresentation of criminal history; and (3) his sentence is substantively unreasonable.

We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742. Whether the district court provided sufficient notice of the enhancement is reviewed under an abuse of discretion standard because Defendant objected to the lack of advance notice at sentencing. *See United States v. Rangel*, 697 F.3d 795, 803 n.7 (9th Cir. 2012). We review the district court's interpretation of the Sentencing Guidelines *de novo* and the application of the Guidelines to the facts of the case for abuse of discretion. *United States v. Gasca-Ruiz*, 852 F.3d 1167, 1170

(9th Cir. 2017).

Even if Rule 32 required advance notice of an enhancement, the record shows the district court notified counsel of its intention to apply the enhancement during sentencing and gave counsel an opportunity to recess to review the matter. Counsel did not take advantage of that opportunity or ask for a continuance in order to further prepare to argue the departure. Therefore, the district court did not abuse its discretion in failing to provide additional notice of Defendant's enhancement prior to sentencing.

The sentence in this case is also procedurally reasonable because the district court more than adequately explained the basis for the upward departure, considered the extent of the deviation, and gave a sufficiently compelling justification for the degree of variance. *See United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008). The district court's application of § 4A1.3 was not procedurally unreasonable; accordingly, we do not reach whether the district court correctly applied the departure provision. The determination rests entirely on whether the ultimate sentence was reasonable, and we hold that it was. *See, e.g., United States v. Ellis*, 641 F.3d 411, 421-22 (9th Cir. 2011).

Finally, considering Defendant's 50-year criminal history, his sentence is substantively reasonable. *See United States v. Door*, 996 F.3d 606, 623 (9th Cir. 2021). The district court also found that Defendant's past indicated a high

probability of recidivism and that he posed a danger to society. Given these considerations, we hold that the district court did not abuse its discretion in imposing Defendant's sentence.

AFFIRMED.