

APR 19 2012

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NOT FOR PUBLICATION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.

JOHN ASEPH,

Defendant - Appellant.

No. 10-10458

D.C. No. 2:05-cr-00363-GMN

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Gloria M. Navarro, District Judge, Presiding

Submitted April 17, 2012**

Before: LEAVY, PAEZ, and BEA, Circuit Judges.

John Aseph appeals from the 51-month sentence imposed following his guilty-plea conviction for six counts of wire fraud, in violation of 18 U.S.C.

§ 1343. 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).

Aseph contends that the district court abused its discretion by basing his sentence on an unreliable amount of loss not substantiated by either probation or the parties. The district court correctly calculated the advisory guidelines range based on the stipulated amount of loss. Contrary to Aseph's contention, the district court did not select a sentence at the high end of the guidelines range based on its belief that the loss was greater than the stipulated amount. Rather, the court properly considered the totality of the circumstances and the 18 U.S.C. § 3553(a) sentencing factors in arriving at a substantively reasonable, within-Guidelines sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

AFFIRMED.