

MAY 21 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NOT FOR PUBLICATION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.

BRIAN KEITH ROBINSON,

Defendant - Appellant.

No. 10-50349

D.C. No. 2:09-cr-00212-SJO

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
S. James Otero, District Judge, Presiding

Submitted May 15, 2012**

Before: CANBY, GRABER, and M. SMITH, Circuit Judges.

Brian Keith Robinson appeals from the 200-month sentence imposed following his guilty-plea conviction for bank robbery, in violation of 18 U.S.C. § 2113(a). 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).

Robinson contends that the district court plainly erred by varying upward from the advisory Sentencing Guidelines range without providing him adequate notice under Federal Rule of Criminal Procedure 32(h) and *Irizarry v. United States*, 553 U.S. 708 (2008). This contention fails because the notice requirement of Rule 32(h) does not apply to variances, see *United States v. Cruz-Perez*, 567 F.3d 1142, 1146 (9th Cir. 2009), and the record belies Robinson's contention that he did not have adequate notice of the facts on which the court based his sentence.

Robinson also contends that the district court procedurally erred by failing to consider adequately his cognitive and emotional problems as mitigating factors. The record belies this contention.

The record also belies Robinson's contention that the district court gave too much weight to his criminal history in imposing his sentence. The sentence imposed, though above the Guidelines range, is reasonable in light of the totality of the circumstances and the 18 U.S.C. § 3553(a) sentencing factors. See *Gall v. United States*, 552 U.S. 38, 51 (2007).

Robinson's unopposed request to file a late reply brief is granted. The reply brief is deemed filed.

AFFIRMED.