

MAY 20 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KERRY P. RUTHERFORD,

Defendant - Appellant.

No. 11-50246

D.C. No. 2:10-cr-00977-R

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Manuel L. Real, District Judge, Presiding

Submitted May 14, 2013\*\*

Before: LEAVY, THOMAS, and MURGUIA, Circuit Judges.

Kerry P. Rutherford appeals from the district court's judgment and challenges the 54-month sentence imposed following his guilty-plea conviction for access device fraud, in violation of 18 U.S.C. § 1029(a)(2); and aggravated identity theft, in violation of 18 U.S.C. § 1028A. We have jurisdiction under 28 U.S.C.

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\* 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).

§ 1291, and we affirm.

Rutherford contends that the district court procedurally erred by failing to consider his history and characteristics and by failing to explain adequately the sentence imposed. We review for plain error, *see United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010), and find none. The district court satisfied its obligations under 18 U.S.C. § 3553 by considering the evidence and arguments before imposing a sentence at the low end of the advisory Sentencing Guidelines range. *See Rita v. United States*, 551 U.S. 338, 358-59 (2007).

**AFFIRMED.**