

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 8 2020

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 19-50264

Plaintiff-Appellee,

D.C. No. 2:17-cr-00437-ODW-2

v.

ANH TUAN NGUYEN, AKA Andrew
Nguyen,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
Otis D. Wright, II, District Judge, Presiding

Submitted December 2, 2020**

Before: WALLACE, CLIFTON, and BRESS, Circuit Judges.

Anh Tuan Nguyen appeals from the district court's judgment and challenges the 30-month sentence imposed following his guilty-plea conviction for conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349, aiding and abetting wire fraud in violation of 18 U.S.C. §§ 2(a) and 1343, and aiding and abetting the use of

* 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).

unauthorized access devices in violation of 18 U.S.C. §§ 2(a) and 1029(a)(2). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Nguyen argues that the district court procedurally erred by failing to consider or explain the disparity between his custodial sentence and his co-defendant's non-custodial sentence. We review for plain error, *see United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010), and conclude that there is none. The record reflects that the district court expressly considered the need to avoid unwarranted sentencing disparities under 18 U.S.C. § 3553(a)(6), heard and considered Nguyen's arguments in favor of a lower sentence, and adequately explained its determination that the below-Guidelines sentence was warranted in this case. *See United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc).

Nguyen also contends that the sentence is substantively unreasonable. The district court did not abuse its discretion. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances. *See Gall*, 552 U.S. at 51. Nguyen has not shown that the disparity between his sentence and that of his co-defendant is unwarranted. *See United States v. Carter*, 560 F.3d 1107, 1121 (9th Cir. 2009) (no unwarranted sentencing disparity where defendants are not similarly situated).

AFFIRMED.