

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 28 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 21-10310

Plaintiff-Appellee,

D.C. No. 2:16-cr-00057-LHR-VCF

v.

MEMORANDUM*

JIHAD ANTHONY ZOGHEIB,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Submitted October 20, 2022**
San Francisco, California

Before: GILMAN,** CALLAHAN, and VANDYKE, Circuit Judges.

Jihad Anthony Zogheib pleaded guilty to eight counts of wire fraud relating to his Ponzi-style scheme that solicited business loans using falsified documents.

* 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).

*** The Honorable Ronald Lee Gilman, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

The district court originally sentenced Zogheib to 96 months' imprisonment and ordered restitution. Zogheib appealed. This court affirmed certain aspects of the district court's loss calculation for sentencing purposes, but vacated the loss amount attributed to victim "M.A." and the amount of restitution owed to victim "K.L." See *United States v. Zogheib*, 843 F. App'x 69 (9th Cir. 2021).

Because Zogheib's Sentencing Guidelines range is dependent on the proper calculation of the loss amount, the district court was ordered to reconsider Zogheib's sentence. *Id.* at 73. On remand, the district court imposed the same 96-month sentence and declined to reduce the amount of restitution owed to either M.A. or K.L. Zogheib has again appealed his sentence and the order of restitution.

First, Zogheib challenges the inclusion in the loss calculation of \$250,000 attributable to M.A. on the basis that the conduct injuring M.A. was not sufficiently related to the fraudulent scheme for which Zogheib was indicted. Zogheib contends that, unlike with his other victims, Zogheib's dealings with M.A. occurred one month before the charged conduct and involved an intermediary rather than himself.

The sentencing court, however, "may consider 'uncharged and unadjudicated' conduct for sentencing purposes if it is deemed 'relevant conduct.'" *United States v. Williamson*, 439 F.3d 1125, 1138 (9th Cir. 2006) (quoting U.S. Sentencing Guidelines Manual § 1B1.3 (2018)). Conduct is relevant if there is

“sufficient similarity and temporal proximity to reasonably suggest that repeated instances of criminal behavior constitute a pattern of criminal conduct.” *United States v. Hahn*, 960 F.2d 903, 910 (9th Cir. 1992); *see also United States v. Newbert*, 952 F.2d 281, 283 (9th Cir. 1991) (recognizing that U.S. Sentencing Guidelines Manual § 1B1.3(a)(2) requires a sentencing court to consider “the entire range of conduct” for crimes involving a pattern of fraud or embezzlement).

M.A.’s loss was properly included in the district court’s calculation. Even though Zogheib used an intermediary, he defrauded M.A. and his numerous other victims using similar methods, namely by soliciting loans using forged documents showing that Zogheib had access to large amounts of money, and then using some of the money obtained from one victim to partially repay another. Moreover, Zogheib defrauded M.A. in January 2011, which was during the time period of the conduct charged in the indictment (from 2010 to 2013).

Zogheib next contests the restitution ordered for both M.A. and K.L. Restitution is considered separately under a different standard than the loss amount used for sentencing. *United States v. Gossi*, 608 F.3d 574, 579–80 (9th Cir. 2010).

According to Zogheib, M.A. is not due any restitution for the same reasons M.A. should be excluded from the loss calculation, and also because M.A. purportedly sold his interest in a default judgement against Zogheib. If M.A. is owed restitution, however, the parties agree that \$250,000 is the correct amount.

The district court properly ordered restitution for M.A. because, as explained above and in this court's previous opinion, M.A. was defrauded as part of Zogheib's pattern of fraudulent behavior. *See Zogheib*, 843 F. App'x at 73. Whether or not M.A. sold his interest in a default judgment against Zogheib does not affect the appropriate amount of restitution. *See* 18 U.S.C. § 3664(f)(1)(B) ("In no case shall the fact that a victim has received . . . compensation with respect to a loss from . . . any other source be considered in determining the amount of restitution.").

Regarding K.L., Zogheib argues that restitution should be reduced because K.L. was able to purchase property belonging to Zogheib in connection with civil proceedings in Nevada state court. K.L. obtained a default judgment against Zogheib in that case and purchased the property at a sheriff's auction.

Under 18 U.S.C. § 3664(j)(2), "[a]ny amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in . . . any State civil proceeding." Moreover, "a sentencing court must reduce the restitution amount by the amount of money the victim received in selling the collateral, not the value of the collateral when the victim received it." *Roberts v. United States*, 572 U.S. 639, 641 (2014).

The district court found that K.L. was unable to recover any financial value for the property because K.L. lost the property to foreclosure, and that it was later

sold by the superior lienholder to a third party. We therefore see no error in the court's conclusion that K.L. never made any money from the sale of the property.

Finally, Zogheib challenges the substantive reasonableness of his sentence, raising a variety of arguments relating to his personal and family history, his deteriorating physical and mental health, and the risks posed by COVID-19. He also contends that the district court erred by granting the government's request for an upward variance based on his understated criminal history.

We review the substantive reasonableness of a sentence using the abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 51 (2007). A sentence is substantively reasonable if it is "sufficient, but not greater than necessary" under the totality of the circumstances and after considering the 18 U.S.C. § 3553(a) factors. *United States v. Carty*, 520 F.3d 984, 994–95 (9th Cir. 2008) (en banc).

The district court considered all the § 3553(a) factors and explained at length why Zogheib's criminal history was "grossly understated by the . . . guideline calculations." In granting the 39-month upward variance, the court found that Zogheib "characteristically has little respect for the law, and that's certainly reflected by these fraudulent misdemeanor and felony convictions," which the court recounted in detail at the first sentencing hearing. We conclude that the court did not abuse its discretion by imposing a sentence of 96 months' imprisonment.

AFFIRMED.