

APR 09 2008

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NOT FOR PUBLICATION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.

CHARLY SION HAGEGE,

Defendant - Appellant.

No. 06-50301

D.C. No. CR-03-00965-FMC-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Florence Marie Cooper, District Judge, Presiding

Submitted April 04, 2008**
Pasadena, California

Before: FARRIS and GOULD, Circuit Judges, and DUFFY,*** District Judge.

Defendant Charly Sion Hagege appeals following his resentencing, asserting numerous errors by the district court. We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Kevin Thomas Duffy, Senior United States District Judge for the Southern District of New York, sitting by designation.

We review for clear error whether a defendant obstructed justice by willfully obstructing or impeding the investigation, prosecution, or sentencing of an offense under U.S.S.G. § 3C1.1. *See United States v. Mondello*, 927 F.2d 1463, 1465 (9th Cir. 1991). Reversal for clear error requires “a definite and firm conviction” that the district court made a mistake. *United States v. Asagba*, 77 F.3d 324, 326 (9th Cir. 1996).

The highly suspicious circumstances surrounding Hagege’s bond application, combined with the fact that the affidavits Hagege submitted provided him only partial absolution, prevent a definite and firm conviction that the district court erred in finding that Hagege obstructed justice under § 3C1.1.

Hagege argues that regardless of the contents of his bond application, he did not “knowingly produce[] fraudulent documents *to the Court* in order to secure his bond application.” (emphasis added). His argument cuts too fine. The presentence report and the district court used imprecise language, but both clearly articulated that under the totality of the circumstances Hagege obstructed justice as defined by § 3C1.1.

We review de novo whether a sentence is cruel and unusual in violation of the Eighth Amendment. *See United States v. Fernandez*, 388 F.3d 1199, 1258 (9th Cir. 2004). The inconvenience and hardship Hagege experienced while awaiting

his resentencing does not rise to the level of an Eighth Amendment violation. His reliance on *Barker v. Wingo*, 407 U.S. 514, 533 (1972), is unavailing since Hagege was not incarcerated pre-trial.

We review de novo the legality of restitution orders. *See United States v. Baggett*, 125 F.3d 1319, 1321 (9th Cir. 1997). Failure to comply with the procedural requirements of § 3664 “is harmless error absent actual prejudice to the defendant.” *United States v. Cienfuegos*, 462 F.3d 1160, 1163 (9th Cir 2006). The district court instructed the probation officer to credit \$ 321,884.71 toward the restitution required of Hagege, who suffered no actual prejudice.

We review sentences for reasonableness. *United States v. Marcial-Santiago*, 447 F.3d 715, 717 (9th Cir. 2006). The district court may treat the Guidelines range as “the starting point and the initial benchmark.” *Gall v. United States*, 128 S. Ct. 586, 596 (2007). The record indicates that the district court used the Guidelines as a starting point and did not presume the within-Guidelines sentence was reasonable. *See United States v. Carty*, ___ F.3d ___, 2008 WL 763770 at *4, *6 (9th Cir. Mar. 24, 2008) (en banc). The district court’s discussion of the relevant § 3553(a) factors was adequate. *See id.* at *5 (“A within-Guidelines sentence ordinarily needs little explanation”).

Hagege’s remaining assignments of error are without merit.

AFFIRMED.