

APR 29 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NOT FOR PUBLICATION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.

WILLIAM A. SWANBERG,

Defendant - Appellant.

No. 07-10436

D.C. No. CR-06-00167-BES

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Brian E. Sandoval, District Judge, Presiding

Submitted April 22, 2008**

Before: GRABER, FISHER, and BERZON, Circuit Judges.

William A. Swanberg appeals from a restitution order imposed following his guilty-plea conviction for mail fraud, in violation of 18 U.S.C. § 1341, and wire

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

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

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fraud, in violation of 18 U.S.C. § 1343. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Swanberg contends that the district court erred by imposing \$120,000 in restitution because, in his plea agreement, the parties stipulated that the amount of loss was lower. However, Swanberg pleaded guilty pursuant to Fed. R. Crim. P. 11(c)(1)(B), and, therefore, the district court was not bound by the recommendations in his plea agreement. *See United States v. Anglin*, 215 F.3d 1064, 1067-68 (9th Cir. 2000).

Swanberg also contends that the record does not support the amount of restitution ordered. We conclude that there was no plain error because, at sentencing, Swanberg requested that the district court impose \$120,000 in restitution. *See United States v. Zink*, 107 F.3d 716, 719-20 (9th Cir. 1997).

Finally, Swanberg contends that the district court committed error under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), by increasing his restitution based upon its own factual findings regarding the amount of loss. However, as Swanberg concedes, that argument is foreclosed. *See United States v. Bussell*, 414 F.3d 1048, 1060-61 (9th Cir. 2005).

AFFIRMED.