

MAR 30 2009

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NOT FOR PUBLICATION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.

JOHNSON LEW,

Defendant - Appellant.

No. 07-50119

D.C. No. CR-06-00289-ER

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Edward Rafeedie, District Judge, Presiding

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Johnson Lew appeals pro se from the restitution order imposed following his guilty-plea conviction for unauthorized access to a protected computer system

* 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).

causing impairment, in violation of 18 U.S.C. § 1030(a)(5)(A)(iii), (a)(5)(B)(i).

We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Lew contends that his due process rights were violated by the district court's failure to take into account the effects of his medical condition on his ability to contest the restitution amount at sentencing. Lew was represented by counsel at sentencing, and the record discloses that the district court properly considered the claims Lew raised in written objections to the presentence investigation report and in argument at sentencing. We conclude that entry of the restitution order did not violate Lew's due process rights. *See United States v. Veerapol*, 312 F.3d 1128, 1134 (9th Cir. 2002).

Lew also challenges the factual basis for the restitution order. Because we conclude that the district court properly calculated the restitution amount, we do not consider the government's contention that Lew waived this claim. *See United States v. Gordon*, 393 F.3d 1044, 1054-55 (9th Cir. 2005); *United States v. Bright*, 353 F.3d 1114, 1125 (9th Cir. 2004).

AFFIRMED.