

DEC 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NOT FOR PUBLICATION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.

JOSE LUIS ESTRADA,

Defendant - Appellant.

No. 09-10113

D.C. No. 2:03-CR-01298-FRZ

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Frank R. Zapata, District Judge, Presiding

Submitted December 15, 2009**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Jose Luis Estrada appeals from his 21-month sentence imposed following revocation of supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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

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

Estrada contends that his sentence is unreasonable because, among other things, the district court failed to adequately consider the fact that his original sentence may have been based on a miscalculated Guidelines range. This contention is belied by the record. *See United States v. Carty*, 520 F.3d 984, 992-93 (9th Cir. 2008) (en banc); *United States v. Gerace*, 997 F.2d 1293, 1295 (9th Cir. 1993) (“An appeal challenging a probation revocation proceeding is not the proper avenue through which to attack the validity of the original sentence”).

Estrada also argues that the court failed to adequately explain why it was ordering the 21-month sentence imposed upon revocation to run subsequent to another federal sentence. The record reflects that the district court did not err in this regard. *See United States v. Fifield*, 432 F.3d 1056, 1066 (9th Cir. 2005).

To the extent that Estrada challenges the substantive reasonableness of his sentence, the sentence is not substantively unreasonable, under the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51-52 (2007).

AFFIRMED.