

JAN 11 2010

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NOT FOR PUBLICATION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.

GUSTAVO ALBERTO ABURTO-
LAUREL,

Defendant - Appellant.

No. 09-50377

D.C. No. 3:08-cr-00602-BEN

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted December 15, 2009**

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

Gustavo Alberto Aburto-Laurel appeals from the 24-month sentence imposed upon revocation of supervised release. We have jurisdiction pursuant to

* 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).

28 U.S.C. § 1291, and we affirm.

Aburto-Laurel contends that the district court procedurally erred by failing to expressly calculate the applicable range under Chapter 7 of the Sentencing Guidelines. Reviewing for plain error, *see United States v. Hammons*, 558 F.3d 1100, 1103 (9th Cir. 2009), we reject this contention because Aburto-Laurel has not shown that his substantial rights were affected by any error. *Cf. id.* at 1105-06 (concluding that the district court's failure to calculate the appropriate guideline range *in addition to* its reliance on an incorrect criminal history category calculation constituted plain procedural error that affected the defendant's substantial rights).

Aburto-Laurel also contends that the sentence, which is at the statutory maximum, is substantively unreasonable. The record reflects that the district court imposed the sentence based upon the factors under 18 U.S.C. § 3583(e), including the need for deterrence. In light of the totality of the circumstances, the sentence is not substantively unreasonable. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc); *United States v. Simtob*, 485 F.3d 1058, 1061, 1063 (9th Cir. 2007).

AFFIRMED.