

OCT 28 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NOT FOR PUBLICATION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.

JAMES TIMOTHY HAYES,

Defendant - Appellant.

No. 10-30071

D.C. No. 3:04-cr-00134-PA

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Owen M. Panner, District Judge, Presiding

Submitted October 19, 2010**

Before: O'SCANNLAIN, TALLMAN, and BEA, Circuit Judges.

James Timothy Hayes appeals from the eight-month sentence imposed upon 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).

Hayes contends that the district court erred by considering legally impermissible factors when imposing the sentence. The record reflects that the district court considered the appropriate sentencing factors under 18 U.S.C. § 3583(e) and was sanctioning Hayes for “breach of trust.” *See United States v. Miqbel*, 444 F.3d 1173, 1176, 1181-82 (9th Cir. 2006).

Hayes also contends that the district court procedurally erred by failing to provide an adequate statement of reasons for the sentence imposed, and that the sentence is substantively unreasonable. The record reflects that the district court did not procedurally err and that, in light of the totality of the circumstances, the sentence is substantively reasonable. *See United States v. Carty*, 520 F.3d 984, 991-93, 995 (9th Cir. 2008) (en banc); *see also Miqbel*, 444 F.3d at 1176 (sentence imposed upon revocation of supervised release reviewed for reasonableness).

AFFIRMED.