

FEB 15 2011

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NOT FOR PUBLICATION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.

JEFFREY LOUIS KINNEY,

Defendant - Appellant.

No. 10-30197

D.C. No. 2:97-cr-00115-RHW

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Robert H. Whaley, District Judge, Presiding

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Jeffrey Louis Kinney appeals from the 16-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).

Kinney contends that the district court committed procedural error by basing the sentence on clearly erroneous facts. The record reflects that the district court's view of the evidence was "plausible in light of the record viewed in its entirety." *United States v. Cantrell*, 433 F.3d 1269, 1284 (9th Cir. 2006).

Kinney also contends that the sentence is substantively unreasonable because, among other things, he had served sufficient time on the underlying charge. In light of the totality of the circumstances, the district court's sentence is substantively reasonable. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

Kinney's motion to enlarge the record on appeal is denied. *See Fed. R. App. P. 10(e); Lowry v. Barnhart*, 329 F.3d 1019, 1025-26 (9th Cir. 2003).

AFFIRMED.