

OCT 27 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NOT FOR PUBLICATION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.

CHRISTOPHER BOYD CUTCLIFF,

Defendant - Appellant.

No. 11-50049

D.C. No. 3:07-cr-02570-BTM

MEMORANDUM*

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

Submitted October 25, 2011**

Before: TROTT, GOULD, and RAWLINSON, Circuit Judges.

Christopher Boyd Cutcliff appeals from the 12-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. Appellant. P. 34(a)(2).

Cutcliff contends that the district court procedurally erred by failing to consider the statutory sentencing factors, and by failing to consider his mitigating arguments. The court did not err, as the record reflects that the district court considered the relevant 18 U.S.C. § 3553(a) sentencing factors and Cutcliff's arguments in mitigation, but found the circumstances insufficient to warrant a sentence lower than the bottom of the Guidelines range. *See United States v. Carter*, 560 F.3d 1107, 1118-19 (9th Cir. 2009).

Cutcliff also contends that his sentence is substantively unreasonable. In light of the totality of the circumstances and the relevant section 3553(a) sentencing factors, the sentence is substantively reasonable. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

Finally, Cutcliff contends that the supervised release revocation procedure under 18 U.S.C. § 3583 violates *Apprendi v. New Jersey*, 530 U.S. 466 (2000). As Cutcliff concedes, the claim is foreclosed by *United States v. Santana*, 526 F.3d 1257, 1262 (9th Cir. 2008).

AFFIRMED.