

DEC 21 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN MARVIN BALLARD,

Defendant - Appellant.

No. 10-10589

D.C. No. 2:06-CR-00283-JCC

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
John C. Coughenour, District Judge, Presiding

Submitted December 19, 2011\*\*

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

John Marvin Ballard appeals from the 60-month sentence imposed on remand for resentencing following his jury-trial conviction for scheming to conceal a material fact, in violation of 18 U.S.C. § 1001(a)(1). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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\* 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).

Contrary to the government's contention, Ballard's release from custody on October 14, 2010, does not render this appeal moot because he remains on supervised release. *See United States v. Verdin*, 243 F.3d 1174, 1178 (9th Cir. 2001) (appeal not moot because "success for [Ballard] could alter the supervised release portion of his sentence") (internal quotation marks and citation omitted).

Ballard contends that the district court failed to comply with 18 U.S.C. § 3553(c), which requires the court to state in open court its reasons for imposing a particular sentence. Because Ballard did not object to the court's statement of reasons at sentencing, this contention is reviewed for plain error. *See United States v. Miqbel*, 444 F.3d 1173, 1176 (9th Cir. 2006). Ballard has not demonstrated the denial of his substantial rights, given the district court's lengthy explanation for the sentence in its written order. *See United States v. Olano*, 507 U.S. 725, 732-34 (1993).

Ballard also contends that his statutory maximum sentence is substantively unreasonable. The sentence is substantively reasonable in light of the totality of the circumstances and the 18 U.S.C. § 3553(a) sentencing factors, in particular the need to protect the public. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

**AFFIRMED.**