

JAN 24 2012

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NOT FOR PUBLICATION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.

HENRY EDWARD MURILLO,

Defendant - Appellant.

No. 11-50261

D.C. No. 3:09-cr-00117-JLS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Janis L. Sammartino, District Judge, Presiding

Submitted January 17, 2012**

Before: LEAVY, TALLMAN, and CALLAHAN, Circuit Judges.

Henry Edward Murillo appeals from the 30-month term of supervised release imposed following the revocation of his 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).

Murillo contends that the sentence is substantively unreasonable because it is greater than necessary, and the district court relied on impermissible factors in its sentencing decision. Taken in context, the district court's reference to "punishment" concerned sanctions for Murillo's supervised release violation, not for the underlying state crime. *See United States v. Simtob*, 485 F.3d 1058, 1063 (9th Cir. 2007). In light of the totality of the circumstances and the 18 U.S.C. § 3583(e) sentencing factors, Murillo's 30-month term of supervised release, which is below the statutory maximum, is substantively reasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

AFFIRMED.