

FEB 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NOT FOR PUBLICATION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.

MELISSA JIMENEZ,

Defendant - Appellant.

No. 11-50426

D.C. No. 3:04-cr-02105-BEN

MEMORANDUM*

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

Submitted February 21, 2012**

Before: FERNANDEZ, McKEOWN, and BYBEE, Circuit Judges.

Melissa Jimenez appeals from the 12-month sentence imposed following the revocation of her 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).

Jimenez contends that the district court procedurally erred because it failed to explain its reasons for imposing an above-Guidelines sentence. She also contends that her sentence is substantively unreasonable because the sentence is longer than necessary. Jimenez's contentions are not supported by the record. The district court did not procedurally err, and Jimenez's sentence is reasonable in light of the totality of the circumstances and the relevant 18 U.S.C. § 3553(a) sentencing factors. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc).

Jimenez last contends that 18 U.S.C. § 3583(e) is unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466 (2000). As she concedes, this contention is foreclosed by *United States v. Huerta-Pimental*, 445 F.3d 1220, 1223-25 (9th Cir. 2006), and *United States v. Santana*, 526 F.3d 1257, 1262 (9th Cir. 2008).

AFFIRMED.