

AUG 15 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NOT FOR PUBLICATION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.

JAVIER MORENO-MENDOZA,

Defendant - Appellant.

No. 12-50100

D.C. No. 3:08-cr-00625-JAH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
John A. Houston, District Judge, Presiding

Submitted August 8, 2012**

Before: ALARCÓN, BERZON, and IKUTA, Circuit Judges.

Javier Moreno-Mendoza appeals from the 6-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).

Moreno-Mendoza contends that the district court procedurally erred because it failed to consider the 18 U.S.C. § 3583(e) sentencing factors, failed to consider his arguments in mitigation, and failed adequately to explain his sentence. The district court listened to Moreno-Mendoza's mitigating arguments and then imposed a below-Guidelines sentence. It did not plainly err. *See United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010).

Moreno-Mendoza also contends that his sentence is substantively unreasonable because the district court failed to properly consider the sentencing factors. The below-Guidelines sentence is substantively reasonable in light of the totality of the circumstances and the section 3583(e) sentencing factors. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

Moreno-Mendoza's contention that section 3583(e)(3) is unconstitutional is foreclosed by *United States v. Santana*, 526 F.3d 1257, 1262 (9th Cir. 2008).

AFFIRMED.