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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NOT FOR PUBLICATION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.

THOMAS GREGORY SMITH,

Defendant - Appellant.

No. 12-30039

D.C. No. 2:05-cr-00224-JCC

MEMORANDUM*

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

Submitted November 13, 2012**

Before: CANBY, TROTT, and W. FLETCHER, Circuit Judges.

Thomas Gregory Smith appeals from the 24-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).

Smith contends that the district court erred by basing his sentence on the violent nature of his revocation offense and criminal history, rather than on his breach of trust. The record reflects that the district court properly considered the violent nature of Smith's conduct in connection with the 18 U.S.C. § 3583(e) sentencing factors. *See United States v. Simtob*, 485 F.3d 1058, 1063 (9th Cir. 2007) (conduct underlying the revocation may be considered by the district court in weighing the severity of the violator's breach of trust). In light of the totality of the circumstances and the section 3583(e) sentencing factors, the 24-month consecutive sentence is substantively reasonable. *See* U.S.S.G. § 7B1.3(f); *Gall v. United States*, 552 U.S. 38, 51 (2007).

AFFIRMED.