

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 13 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ADRIAN URIAH BROKEN ROPE,

Defendant - Appellant.

No. 12-30146

D.C. No. 1:11-cr-00074-JDS-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Jack D. Shanstrom, Senior District Judge, Presiding

Submitted March 7, 2013**
Portland, Oregon

Before: TASHIMA, CLIFTON, and BEA, Circuit Judges.

Adrian Broken Rope appeals the sentence for his convictions of involuntary manslaughter and three counts of assault. 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).

Broken Rope asserts, for the first time, procedural error at his sentencing, so that claim is reviewed for plain error. *United States v. Rangel*, 697 F.3d 795, 800 (9th Cir. 2012). The district court was not required to list every factor under 18 U.S.C. § 3553. *See United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc). The district court delivered a “statement of reasons” as required by 18 U.S.C. § 3553(a). It sufficiently explained its decision to sentence Broken Rope to sixty months in prison, even though that was above the recommended range under the federal Sentencing Guidelines. This case did not require more elaborate explanation. *See Carty*, 520 F.3d at 995 (noting that a judge’s explanation of reasons will vary case-by-case). The reasoning behind the sentence was evident. There was no plain error.

The sentence was not substantively unreasonable. There is no presumption that an above-Guidelines sentence is unreasonable. *Gall v. United States*, 552 U.S. 38, 51 (2007). The district court’s expressed desire to deter similar behavior in the community, the loss of life, and the severe injuries all support the sentence. It did not represent an abuse of discretion.

AFFIRMED.