

JUN 13 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>BRANDON PATRICK AKANA,</p> <p>Defendant - Appellant.</p>

No. 12-10602

D.C. No. 1:97-cr-00687-DAE

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
David A. Ezra, District Judge, Presiding

Submitted June 10, 2013**

Before: HAWKINS, McKEOWN, and BERZON, Circuit Judges.

Brandon Patrick Akana appeals from the district court’s judgment and challenges the 22-month sentence imposed upon revocation of supervised release.

We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Akana contends that the district court erred by impermissibly lengthening

* 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).

his sentence based on the need for rehabilitation. We review for plain error, *see United States v. Grant*, 664 F.3d 276, 279 (9th Cir. 2011), and find none. Though the district court discussed rehabilitation during the sentencing hearing, it did not impose or lengthen the sentence based on Akana's rehabilitative needs. *See Tapia v. United States*, 131 S. Ct. 2382, 2392 (2011) ("A court commits no error by discussing the opportunities for rehabilitation within prison or the benefits of specific treatment or training programs.").

We decline to reach Akana's argument that the district court improperly relied on the need for punishment in imposing sentence because it is raised for the first time in the reply brief. *See United States v. Romm*, 455 F.3d 990, 997 (9th Cir. 2006).

Akana's motion for reconsideration of the court's order granting the government's request to extend time to file the answering brief is denied as moot.

AFFIRMED.