

OCT 23 2013

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NOT FOR PUBLICATION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.

MICHAEL KERN WENTZ,

Defendant - Appellant.

No. 13-50223

D.C. No. 3:08-cr-03155-WQH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted October 15, 2013**

Before: FISHER, GOULD, and BYBEE, Circuit Judges..

Michael Kern Wentz appeals from the district court's judgment and challenges the nine-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).

Wentz contends that the district court did not give an adequate explanation for the sentence. The record does not support this claim. The court explained that the sentence was based upon the need to sanction Wentz's repeated use of a controlled substance in violation of the terms of his supervised release.

Wentz also contends that the sentence is substantively unreasonable. The district court did not abuse its discretion in imposing Wentz's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The within-Guidelines sentence is substantively reasonable in light of the 18 U.S.C. § 3583(e) sentencing factors and the totality of the circumstances, including Wentz's breach of the court's trust. *See id.*; *United States v. Simtob*, 485 F.3d 1058, 1062-63 (9th Cir. 2007).

AFFIRMED.