

DEC 30 2013

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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NOT FOR PUBLICATION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.

JOSEPH A. McDANIELS,

Defendant - Appellant.

No. 13-30026

D.C. No. 2:12-cr-00185-JLR

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
James L. Robart, District Judge, Presiding

Submitted December 17, 2013**

Before: GOODWIN, WALLACE, and GRABER, Circuit Judges.

Joseph A. McDaniels appeals from the district court's judgment and challenges the 113-month prison sentence and three-year term of supervised release imposed following his guilty-plea conviction for interstate transportation

* 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).

for prostitution, in violation of 18 U.S.C. § 2421. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

McDaniels contends the government breached the plea agreement by advocating for a three-year term of supervised release in addition to the agreed-upon term of imprisonment. We review de novo whether the government breached the plea agreement, *see United States v. Whitney*, 673 F.3d 965, 970 (9th Cir. 2012), and determine that it did not. The government performed its obligation under the agreement by recommending a 120-month term of imprisonment. Moreover, the district court properly concluded that the recommendation of a three-year term of supervised release did not breach the plea agreement, where the plea agreement advised McDaniels that a term of supervised release was one of the statutory penalties for his offense, and was silent regarding whether the government could recommend a term of supervised release. *See United States v. Franco-Lopez*, 312 F.3d 984, 989 (9th Cir. 2002) (when construing a plea agreement, this court must determine what the defendant reasonably believed to be the terms of the plea agreement at the time of the plea).

AFFIRMED.