

FEB 26 2014

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NOT FOR PUBLICATION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.

ELROY JAY WEASELBEAR, Sr.,

Defendant - Appellant.

No. 13-30111

D.C. No. 1:12-cr-00069-RFC

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Richard F. Cebull, District Judge, Presiding

Submitted February 18, 2014**

Before: ALARCÓN, O’SANNLAIN, and FERNANDEZ, Circuit Judges.

Elroy Jay Weaselbear, Sr., appeals from the district court’s judgment and challenges the ten-year term of supervised release imposed following his guilty-plea conviction for incest, in violation of 18 U.S.C. § 1153(b) and Montana Code

* 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).

Annotated § 45-5-507(1). We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand.

Weaselbear contends, and the government concedes, that the ten-year term of supervised release exceeds the statutory maximum. The maximum authorized term of supervised release for a Class A felony is five years. *See* 18 U.S.C. § 3583(b)(1). Accordingly, we vacate the term of supervised release and remand to the district court for the limited purpose of setting a new term within the statutorily permitted range. *See United States v. Guzman-Bruno*, 27 F.3d 420, 423 (9th Cir. 1994).

VACATED and REMANDED.