

MAR 13 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NOT FOR PUBLICATION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.

JUAN MANUEL GUTIERREZ-
HERRERA,

Defendant - Appellant.

No. 13-50090

D.C. No. 3:07-cr-00959-GT

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Gordon Thompson, Jr., District Judge, Presiding

Submitted March 10, 2014**

Before: PREGERSON, LEAVY, and MURGUIA, Circuit Judges.

Juan Manuel Gutierrez-Herrera appeals from the district court’s judgment and challenges the 24-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).

Gutierrez-Herrera contends that the district court erred by (i) failing to calculate the Guidelines range and using the statutory maximum as a initial benchmark for sentencing; (ii) failing to consider the applicable 18 U.S.C. § 3553(a) sentencing factors and his mitigating arguments; (iii) failing to explain adequately the sentence imposed; and (iv) improperly relying on the need to promote respect for the law in fashioning the sentence. We review for plain error, *see United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010), and find none. The record reflects that the court was aware of the Guidelines range and used that range as the initial benchmark. In addition, the court adequately considered Gutierrez-Herrera's mitigating arguments and the applicable section 3553(a) sentencing factors, sufficiently explained the sentence, and did not choose the sentence based on an improper factor. *See United States v. Carty*, 520 F.3d 984, 992-93 (9th Cir. 2008) (en banc).

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

AFFIRMED.