

MAR 17 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NOT FOR PUBLICATION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.

DUANE EDWARD WICKER,

Defendant - Appellant.

No. 13-50262

D.C. No. 3:02-cr-00624-L

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
M. James Lorenz, District Judge, Presiding

Submitted March 10, 2014**

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

Duane Edward Wicker appeals from the district court's judgment and challenges the 12-month sentence imposed upon revocation of supervised release.

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

Wicker contends that the district court erred procedurally by relying on an

* 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).

improper sentencing consideration, namely, the desire “to avoid more confusion,” in selecting his 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 district court relied on proper sentencing factors when determining the sentence. *See* 18 U.S.C. § 3583(e).

Wicker also contends that his sentence is substantively unreasonable. The district court did not abuse its discretion in imposing Wicker’s sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The within-Guidelines sentence is substantively reasonable in light of the section 3583(e) sentencing factors and the totality of the circumstances, including Wicker’s extensive criminal history and his history on supervision. *See id.*

AFFIRMED.