

APR 14 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NOT FOR PUBLICATION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.

TIERE SMITH,

Defendant - Appellant.

No. 13-50287

D.C. No. 2:11-cr-00284-DSF

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Submitted April 7, 2014**

Before: TASHIMA, GRABER, and IKUTA, Circuit Judges.

Tiere Smith 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).

Smith contends that the district court violated his right to due process by basing the sentence on misleading and unreliable information regarding his prior federal sentence. We review for plain error, *United States v. Vanderwerfhorst*, 576 F.3d 929, 934 (9th Cir. 2009), and find none. The record reflects that the district court sentenced Smith consistent with the requirements of due process. *See id.* at 935-36 (to establish due process violation at sentencing, defendant must show that his sentence was “demonstrably” based on information that lacked “some minimal indicium of reliability beyond mere allegation”) (internal quotations omitted). The district court did not rely on false or unreliable information when it referred to Smith’s previous sentence as “lenient,” and it properly based the sentence on Smith’s continuing pattern of criminal conduct, failure to be deterred, danger to the community, and breach of the court’s trust. *See* 18 U.S.C. § 3583(e); *United States v. Miqbel*, 444 F.3d 1173, 1182 (9th Cir. 2006).

AFFIRMED.