

NOV 25 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NOT FOR PUBLICATION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.

JOSE SANCHEZ-OSUNA, a.k.a. Jesus
Palacios-Burgos; JORGE JAVIER
RIVERA LOPEZ,

Defendant - Appellant.

Nos. 13-10599

13-10602

D.C. Nos. 2:12-cr-00389-GMN

2:12-cr-00447-GMN

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Gloria M. Navarro, Chief Judge, Presiding

Submitted November 18, 2014**

Before: LEAVY, FISHER, and N.R. SMITH, Circuit Judges.

In these consolidated appeals, Jose Sanchez-Osuna, a.k.a. Jorge Javier Rivera Lopez, appeals from the district court’s judgments and challenges the 51-month sentence imposed following his guilty-plea conviction for being a deported

* 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).

alien found unlawfully in the United States, in violation of 8 U.S.C. § 1326; and the 12-month-and-one-day consecutive sentence imposed upon revocation of supervised release. We have jurisdiction under 28 U.S.C. § 1291. We dismiss Appeal No. 13-10599, and we affirm in Appeal No. 13-10602.

The government contends that these appeals should be dismissed based on the appeal waiver in the parties' plea agreement. We review *de novo* whether an appellant has waived his right to appeal. *See United States v. Joyce*, 357 F.3d 921, 922 (9th Cir. 2004). We dismiss Appeal No. 13-10599 because the waiver covers any appeal of Sanchez-Osuna's within-Guidelines sentence. We decline to dismiss Sanchez-Osuna's challenge to his above-Guidelines revocation sentence, however, because it is not unambiguously encompassed by the language of the waiver. *See id.* at 922-23.

In Appeal No. 13-10602, Sanchez-Osuna first contends that the district court procedurally erred by failing to consider the 18 U.S.C. § 3583(e) sentencing factors and by failing to explain its reasons for imposing a consecutive revocation 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 adequately considered the section 3583(e) sentencing factors. *See United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc) ("The district court

need not tick off each of the [sentencing] factors to show that it has considered them.”). Moreover, the reasons for imposing the sentence, including the seriousness of Sanchez-Osuna’s breach of trust and the need to deter, are apparent from the record. *See id.* (adequate explanation may be inferred from the record as a whole).

Sanchez-Osuna also contends that the consecutive revocation sentence is substantively unreasonable. The district court did not abuse its discretion in imposing Sanchez-Osuna’s sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The sentence is substantively reasonable in light of the section 3583(e) sentencing factors and the totality of the circumstances, including Sanchez-Osuna’s criminal and immigration history. *See* U.S.S.G. § 7B1.3(f); *Gall*, 552 U.S. at 51.

Appeal No. 13-10599 DISMISSED; Appeal No. 13-10602 AFFIRMED.