

APR 24 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DARYL KEITH MARSHALL,

Defendant - Appellant.

No. 14-50426

D.C. No. 3:07-cr-01821-BEN

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted April 22, 2015**

Before: GOODWIN, BYBEE, and CHRISTEN, Circuit Judges.

Daryl Keith Marshall appeals from the district court's judgment and challenges the 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).

Marshall contends that the district court erred by failing to provide him with an opportunity to be heard regarding whether his violation warranted revocation of his supervised release. Contrary to Marshall's contention, the denial of the right of allocution is not a "structural error" warranting automatic reversal. *See Boardman v. Estelle*, 957 F.2d 1523, 1530 (9th Cir. 1992). Rather, we review for plain error, *see United States v. Wagnine*, 543 F.3d 546, 551 (9th Cir. 2008), and find none. The record reflects that, in light of his multiple prior violations, the district court rejected Marshall's request to be placed back on supervised release. Accordingly, Marshall has not shown a reasonable probability that, but for the alleged error, the district court would have determined that revocation was unwarranted. *See United States v. Dominguez Benitez*, 542 U.S. 74, 81-82 (2004).

AFFIRMED.