

MAY 18 2015

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NOT FOR PUBLICATION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 MANUEL DE LA TORRE-
VENTURA,

Defendant - Appellant.

No. 14-50397

D.C. No. 3:11-cr-04829-BEN

MEMORANDUM*

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

Submitted May 13, 2015**

Before: LEAVY, CALLAHAN, and M. SMITH, Circuit Judges.

Jose Manuel De La Torre-Ventura appeals from the district court's judgment and challenges the 18-month sentence imposed upon revocation of probation. 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).

De La Torre-Ventura contends that the district court imposed an above-Guidelines sentence based on clearly erroneous facts, namely, an assumption that he drove without a license or insurance and that he still had an alcohol problem and was a danger to the public. We agree that the record does not support the district court's suggestion that De La Torre-Ventura did not have insurance or a license at the time he was pulled over for a traffic violation. However, the court did not impose sentence on this basis. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc). Furthermore, the court's concern over De La Torre-Ventura's alcohol problem and propensity of recidivism was supported by his history of driving under the influence.

De La Torre-Ventura next contends that his sentence is substantively unreasonable. The district court did not abuse its discretion in imposing De La Torre-Ventura's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The 18-month sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances. *See Gall*, 552 U.S. at 51; *United States v. Miqbel*, 444 F.3d 1173, 1182 (9th Cir. 2006).

AFFIRMED.