

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 27 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 17-10309

Plaintiff-Appellee,

D.C. No. 2:08-cr-00283-JCM

v.

MEMORANDUM\*

FRED JAMES NIX, a.k.a. June P,

Defendant-Appellant.

Appeal from the United States District Court  
for the District of Nevada  
Robert C. Jones, District Judge, Presiding

Submitted October 23, 2017\*\*

Before: LEAVY, WATFORD, and FRIEDLAND, Circuit Judges.

Fred James Nix 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 vacate and remand.

As the government concedes, the district court plainly erred by failing to

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

address Nix personally to ask if he wanted to speak before sentencing. *See* Fed. R. Crim. P. 32.1(b)(2)(E); *United States v. Daniels*, 760 F.3d 920, 925-26 (9th Cir. 2014). Accordingly, we vacate and remand for resentencing. *See Daniels*, 760 F.3d at 926.

Nix also argues that the district court failed to calculate the applicable Guidelines range, relied on clearly erroneous facts regarding his dangerousness, wrongly ordered him shackled during the revocation hearing, violated his due process rights by relying on unproven, dismissed allegations, and imposed a substantively unreasonable sentence. We need not resolve these claims in light of our decision to remand for resentencing. However, considering Nix's allegations and the record as a whole, we agree with Nix that his case should be remanded to a different district judge on remand. *See United States v. Quach*, 302 F.3d 1096, 1103-04 (9th Cir. 2002) (ordering reassignment to preserve the appearance of justice). Accordingly, on remand, this case shall be reassigned to a different district judge within the District of Nevada.

On September 28, 2017, at Docket Entry No. 7, appellant filed a notice of intent to file previously sealed documents publicly pursuant to Interim Ninth Circuit Rule 27-13(f), and submitted volume III of the excerpts of record

provisionally under seal. No other party has filed a motion to file or maintain these documents under seal. Therefore, the Clerk is directed to unseal the notice and volume III of the excerpts of record, and to file publicly the opening brief and volumes I through III of the excerpts of record.

**VACATED and REMANDED.**