

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 21 2018

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 16-30155

Plaintiff-Appellee,

D.C. No. 6:09-cr-00025-CCL

v.

MEMORANDUM*

GLENN STEVEN SCOTT,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Montana
Charles C. Lovell, District Judge, Presiding

Submitted August 15, 2018**

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

Glenn Steven Scott appeals pro se from the district court's judgment and challenges the 135-month sentence imposed following his guilty-plea conviction for possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B), and destruction or removal of property to prevent seizure, in violation of 18 U.S.C.

* 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).

§ 2232(a). We have jurisdiction under 28 U.S.C. § 1291, and we affirm

Scott contends that the district court erred by considering his conduct in absconding from pre-trial release when fashioning his sentence. Because Scott did not raise this objection in the district court, we review for plain error. *See United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010). The district court did not plainly err. Contrary to Scott’s contention, the government’s promise in the oral plea agreement that it would not prosecute Scott for absconding, and the district court’s recognition of this promise, did not preclude the district court from considering this conduct at sentencing. *See United States v. Christensen*, 732 F.3d 1094, 1104 n.2 (9th Cir. 2013) (“[A] sentencing court may rely on any evidence relating to a defendant’s background, character, and conduct when considering the sentencing factors found in 18 U.S.C. § 3553(a).”); *see also United States v. Streich*, 560 F.3d 926, 930 (9th Cir. 2009) (finding no breach of a plea agreement where government advocated for a higher sentence based on conduct for which it had promised not to prosecute the defendant).

Scott next contends that the district court violated his statutory and constitutional rights by denying him the opportunity to present mitigating evidence at sentencing. This argument is unsupported by the record. When Scott informed the district court that he and his counsel disagreed over the presentation of certain evidence, the district court continued the initial sentencing hearing and appointed

new counsel to permit Scott to present the evidence in question. After consultation with new counsel, Scott decided against presenting the evidence. Contrary to Scott's contention, the district court's comments to Scott do not reveal bias.

To the extent Scott contends that he received ineffective assistance of counsel at sentencing, we decline to consider this claim on direct appeal. *See United States v. Rahman*, 642 F.3d 1257, 1259-60 (9th Cir. 2011) (this court reviews ineffective assistance claims on direct appeal only where the record is sufficiently developed or inadequate representation is obvious).

We decline to consider issues raised for the first time in Scott's reply brief. *See United States v. Kama*, 394 F.3d 1236, 1238 (9th Cir. 2005).

AFFIRMED.