

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 21 2019

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 18-10321

Plaintiff-Appellee,

D.C. No. 2:11-cr-00064-APG

v.

MEMORANDUM*

DAVID DAMANTE,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Nevada

Andrew P. Gordon, District Judge, Presiding

Submitted February 19, 2019**

Before: FERNANDEZ, SILVERMAN, and WATFORD, Circuit Judges.

David Damante appeals from the district court's judgment and challenges the 14-month sentence of imprisonment and 12-month term of supervised release imposed upon 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 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).

Damante contends that his sentence is substantively unreasonable. He argues that the district court acted unreasonably in imposing an above-Guidelines custodial sentence after crediting his evidence concerning the threats against him, and in imposing a 12-month term of supervised release for “technical” violations. The district court did not abuse its discretion. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The record shows that the district court was only partially persuaded by Damante’s mitigating evidence and believed that an above-Guidelines sentence was warranted to promote deterrence and to protect the public. The 14-month sentence is substantively reasonable in light of the 18 U.S.C. § 3583(e) sentencing factors and the totality of the circumstances, including the length of Damante’s prior revocation sentence and his continued poor performance on supervision. *See Gall*, 552 U.S. at 51. Moreover, the 12-month term of supervised release is substantively reasonable because the nature and number of Damante’s violations showed that a substantial period of continued supervision is warranted. *See United States v. Simtob*, 485 F.3d 1058, 1062-63 (9th Cir. 2007) (need to deter may be greater where the conduct underlying the revocation is similar to the conduct underlying the original offense).

AFFIRMED.