

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 22 2019

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 18-30029

Plaintiff-Appellee,

D.C. No. 2:15-cr-00028-MJP-1

v.

MEMORANDUM*

ROBBY LEE ROBINSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Washington
Marsha J. Pechman, District Judge, Presiding

Submitted April 17, 2019**

Before: McKEOWN, BYBEE, and OWENS, Circuit Judges.

Robby Lee Robinson appeals from the district court's judgment and challenges the 90-month sentence imposed on remand for resentencing following his conviction for being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). 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).

Robinson contends that the district court violated his due process rights at resentencing by incorrectly assuming that (1) he had access to drug rehabilitation programs, and (2) he willfully failed to take advantage of them. We review Robinson's unpreserved sentencing challenge for plain error, *see United States v. Vanderwerfhorst*, 576 F.3d 929, 934 (9th Cir. 2009), and conclude that there is none. When read in context, the challenged statement reflects the court's concern with Robinson's failure to rehabilitate, as evidenced by his involvement in an assault in prison, his efforts to obstruct justice, his continued failure to accepted responsibility, and the violent nature of his offense. The district court, therefore, did not rely on "false or unreliable" information in imposing the sentence. *See id.* at 936.

AFFIRMED.