

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 22 2019

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LESLIE CHARLIE VAN WINKLE, AKA
Leslie C Van Winkle,

Defendant-Appellant.

No. 18-10499

D.C. No. 3:01-cr-00181-SPL-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Steven P. Logan, District Judge, Presiding

Submitted August 19, 2019**

Before: SCHROEDER, PAEZ, and HURWITZ, Circuit Judges.

Leslie Charlie Van Winkle appeals from the district court's judgment and challenges the 30-month sentence imposed upon his third revocation of supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Van Winkle first argues that the district court procedurally erred by failing

* 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).

to address his arguments regarding his brain damage and to explain the above-Guidelines sentence. The district court did not plainly err. *See United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010). The court considered Van Winkle's arguments and sufficiently explained that the upward variance was warranted in light of Van Winkle's repeated breaches of the court's trust, the need to protect the public, and Van Winkle's unsuitability for supervision. *See United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc).

Van Winkle also contends that the sentence is substantively unreasonable in light of his brain damage and resulting cognitive deficiencies. The district court did not abuse its discretion. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The sentence is substantively reasonable in light of the 18 U.S.C. § 3583(e) sentencing factors and the totality of the circumstances. *See Gall*, 552 U.S. at 51; *United States v. Simtob*, 485 F.3d 1058, 1063 (9th Cir. 2007).

We decline to consider issues not specifically raised in Van Winkle's opening brief. *See United States v. Kama*, 394 F.3d 1236, 1238 (9th Cir. 2005).

Van Winkle's unopposed motion for judicial notice is granted.

AFFIRMED.