

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 25 2023

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOSHUA CROFT, AKA Truth,

Defendant-Appellant.

Nos. 22-10119

22-10120

D.C. Nos.

2:13-cr-00054-KJD-DJA-1

2:13-cr-00019-KJD-DJA-1

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Kent J. Dawson, District Judge, Presiding

Submitted April 17, 2023\*\*

Before: CLIFTON, R. NELSON, and BRESS, Circuit Judges.

In these consolidated appeals, Joshua Croft appeals from the judgments  
revoking his supervised release and imposing 30-month consecutive sentences.

We have jurisdiction under 28 U.S.C. § 1291, and we affirm in part, vacate in part,

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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). Accordingly, Croft's motion  
to waive oral argument is granted.

and remand for resentencing.

Croft contends that there was insufficient evidence to support the district court's finding that he violated the terms of his supervised release, and that the court violated his due process rights by denying his motion to continue the revocation hearing to allow his brother to testify. In evaluating a challenge to the sufficiency of the evidence supporting a supervised release revocation, we view the evidence in the light most favorable to the government and ask whether "any rational trier of fact could have found the essential elements of a violation by a preponderance of the evidence." *United States v. King*, 608 F.3d 1122, 1129 (9th Cir. 2010) (internal quotation marks omitted). The evidence adduced at the hearing was more than sufficient to support the district court's finding that Croft had violated the conditions of his supervision by committing new crimes and failing to report to scheduled drug testing. Moreover, the court did not abuse its discretion in declining to continue the hearing, given the circumstances surrounding the unavailability of Croft's brother and the extent of the evidence against Croft. *See United States v. Rivera-Guerrero*, 426 F.3d 1130, 1138-39 (9th Cir. 2005). Accordingly, we affirm the district court's revocation of Croft's supervised release.

Croft also argues that the district court procedurally erred in imposing the consecutive 30-month sentences. The government concedes that the district court

failed to calculate the applicable Guidelines range on the record, requiring remand. Accordingly, we vacate Croft's sentences and remand for resentencing. As the government asserts, remand will provide the district court an opportunity to reconsider the grade of Croft's supervised release violations as part of its calculation of the applicable Guidelines range. *See United States v. Edling*, 895 F.3d 1153, 1158 (9th Cir. 2018) (holding that robbery under Nevada law is not a categorical crime of violence). Furthermore, the district court will have an opportunity to consider the applicable statutory maximum, which the government acknowledges is 24 months for each revocation sentence. The parties may raise these issues, and any other appropriate arguments, on remand.

We decline Croft's request for reassignment to a different district judge on remand. The record does not support Croft's allegations of bias and reassignment is not in the interests of justice. *See United States v. Wolf Child*, 699 F.3d 1082, 1102 (9th Cir. 2012).

Croft's motion for release pending appeal is denied as moot.

**AFFIRMED in part; VACATED in part; and REMANDED for resentencing.**