

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 26 2023

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 22-10274

Plaintiff-Appellee,

D.C. No. 1:20-cr-00072-ADA-1

v.

MEMORANDUM*

ALFREDO MARTINEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of California
Ana de Alba, District Judge, Presiding

Submitted April 17, 2023**

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

Alfredo Martinez appeals from the district court's judgment and challenges the 9-month sentence imposed upon revocation of supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Martinez's supervised release was revoked following his admission to

* 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).

unauthorized travel to Florida. He contends that the district court procedurally erred by imposing the sentence based on clearly erroneous facts regarding a separate trip to Mexico. Although evidence presented after the sentencing hearing showed that the court was mistaken as to whether Martinez had provided the requisite documentation regarding the Mexico trip, the court's error was harmless. The record shows that the court selected the 9-month sentence based on the circumstances of Martinez's unauthorized travel to Florida—the conduct supporting the revocation—as well as other instances in which Martinez failed to take responsibility for his actions. On this record, we conclude that the district court did not “choose [the] sentence based on clearly erroneous facts.” *United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

Martinez also contends that the district court ignored certain nonfrivolous mitigating arguments. Because he did not object on this basis below, 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 because, although it did not address each of Martinez's mitigating arguments, it considered them, acknowledged his efforts “to get [his] life back in order,” and sufficiently explained the sentence to allow for meaningful appellate review. *See United States v. Perez-Perez*, 512 F.3d 514, 516-17 (9th Cir. 2008).

Finally, Martinez's argument regarding the cumulative effect of the claimed

errors is unavailing.

AFFIRMED.