

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 4 2024

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ARMANDO DIAZ-ROGEL,

Defendant - Appellant.

No. 23-1977

D.C. No. 3:20-cr-00809-DMS-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted March 26, 2024**

Before: TASHIMA, SILVERMAN, and KOH, Circuit Judges.

Armando Diaz-Rogel appeals from the district court's judgment and challenges the 6-month term of imprisonment imposed upon the revocation of his supervised release. We have jurisdiction under 28 U.S.C § 1291, and we affirm.

As a preliminary matter, the government is incorrect that Diaz-Rogel's

* 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).

appeal is moot. *See United States v. Verdin*, 243 F.3d 1174, 1178 (9th Cir. 2001) (holding that an appeal is not moot if success on appeal could result in a reduction in the period of supervised release).

Diaz-Rogel contends that his sentence is substantively unreasonable because the district court gave insufficient weight to his attempts to overcome his drug addiction. The district court did not abuse its discretion. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The below-Guidelines sentence is substantively reasonable in light of the 18 U.S.C. § 3583(e) sentencing factors and the totality of the circumstances, including Diaz-Rogel's serious breaches of the court's trust and his criminal history. *See Gall*, 552 U.S. at 51; *United States v. Gutierrez-Sanchez*, 587 F.3d 904, 908 (9th Cir. 2009) ("The weight to be given the various factors in a particular case is for the discretion of the district court."); *United States v. Simtob*, 485 F.3d 1058, 1062 (9th Cir. 2007) (purpose of revocation sentence is to sanction the defendant's breach of the district court's trust). Moreover, contrary to Diaz-Rogel's contention, the record reflects that the district court gave due consideration to the § 3583(e) sentencing factors and sufficiently explained the sentence. *See United States v. Carty*, 520 F.3d 984, 992-93 (9th Cir. 2008) (en banc).

AFFIRMED.