

JUN 21 2016

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

NIGEL GRAHAM ERNST,

Defendant - Appellant.

No. 15-30290

D.C. No. 9:05-cr-00053-DWM

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted June 14, 2016**

Before: BEA, WATFORD, and FRIEDLAND, Circuit Judges.

Nigel Graham Ernst appeals from the district court's judgment and challenges the aggregate 6-month sentences imposed upon revocation of supervised release. 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 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Ernst contends that his sentence is substantively unreasonable because the district court placed undue emphasis on uncharged conduct to the exclusion of mitigating factors. 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) factors and the totality of the circumstances, including Ernst’s breach of the court’s trust within two months of being placed on supervised release. *See United States v. Simtob*, 485 F.3d 1058, 1062-63 (9th Cir. 2007); *see also United States v. Xinidakis*, 598 F.3d 1213, 1217 (9th Cir. 2010) (“A district court has discretion to impose concurrent or consecutive sentences after revocation of multiple concurrent terms of supervised release.”).

AFFIRMED.