

MAR 14 2017

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NOT FOR PUBLICATION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.

SANXAY XAYADETH,

Defendant-Appellant.

No. 16-30083

D.C. No. 2:15-cr-00240-JLR

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
James L. Robart, District Judge, Presiding

Submitted March 8, 2017**

Before: LEAVY, W. FLETCHER, and OWENS, Circuit Judges.

Sanxay Xayadeth appeals from the district court's judgement and challenges the 94-month sentence imposed following his guilty-plea conviction for possession of a stolen firearm, in violation of 18 U.S.C. § 922(j). 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 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).

The district court held a joint sentencing hearing for the instant criminal conviction and Xayadeth's violation of supervised release. At the hearing, the district court determined that an aggregate 94-month sentence was warranted, which was composed of a 57-month sentence for the criminal conviction and a consecutive low-end 37-month sentence for the supervised release violation. Without objection from Xayadeth, however, the district court elected to impose the 94-month sentence for the criminal conviction and dismiss the supervised release violation.

Xayadeth contends that the district court procedurally erred by failing to explain adequately the 37-month portion of the sentence that the court said reflected the supervised release violation. We review for plain error, *see United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010), and conclude there is none. The record reflects that the court sufficiently explained its sentencing determination. *See United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc).

Xayadeth next contends that his 94-month sentence is substantively unreasonable. The district court did not abuse its discretion in imposing Xayadeth's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The sentence is substantively reasonable in light of the relevant 18 U.S.C. § 3553(a)

factors and the totality of the circumstances, including Xayadeth's significant criminal history. *See Gall*, 552 U.S. at 51.

AFFIRMED.