

APR 24 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NOT FOR PUBLICATION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.

JORGE PEREZ-DIAZ,

Defendant-Appellant.

No. 16-50229

D.C. No. 3:13-cr-03064-LAB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted April 11, 2017**

Before: GOULD, CLIFTON, and HURWITZ, Circuit Judges.

Jorge Perez-Diaz appeals from the district court's judgment and challenges the 18-month custodial sentence and ten-month term of supervised release 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 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).

Perez-Diaz contends that the district court procedurally erred by failing to consider his mitigating argument that his underlying deportation order may have been erroneous. We review for plain error, *see United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010), and conclude that there is none. The record reflects that the district court properly considered Perez-Diaz's arguments and explained sufficiently its determination that an above-Guidelines sentence was warranted in light of his significant criminal and immigration history. *See Rita v. United States*, 551 U.S. 338, 357-58 (2007).

Perez-Diaz next contends that his sentence is substantively unreasonable in light of the mitigating factors. The district court did not abuse its discretion in imposing Perez-Diaz's sentence. *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 the need for deterrence. *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.").

AFFIRMED.