

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 17 2017

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ROY LAMONT PRETTYMAN, a.k.a. Roy
Lamont Daily, a.k.a. Roy Daily Prettyman,

Defendant-Appellant.

No. 16-50313

D.C. No. 2:15-cr-00709-JFW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted November 15, 2017**

Before: CANBY, TROTT, and GRABER, Circuit Judges.

Roy Lamont Prettyman appeals from the district court's judgment and challenges the 33-month sentence imposed following his guilty-plea conviction for counterfeiting obligations of the United States, in violation of 18 U.S.C. § 471.

We have jurisdiction under 28 U.S.C. § 1291.

* 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).

Prettyman contends that the district court violated Rule 43 of the Federal Rules of Criminal Procedure, as well as his constitutional rights to due process and to be present at sentencing, by sentencing him in absentia. The government argues that this appeal is barred by the appeal waiver contained in the parties' plea agreement. We review de novo. *See United States v. Bibler*, 495 F.3d 621, 623 (9th Cir. 2007). The district court did not clearly err when it found that Prettyman was voluntarily absent from the sentencing hearing and, therefore, the court did not abuse its discretion when it sentenced Prettyman in absentia. *See United States v. Ornelas*, 828 F.3d 1018, 1021 (9th Cir. 2016). We, therefore, affirm with respect to the procedure used to impose the sentence. Because Prettyman's sentence was not unlawful, we dismiss pursuant to the valid appeal waiver. *See id.* at 1023.

Prettyman's motion to take judicial notice of a document showing his arrest by the Los Angeles County Sheriff's Department is denied because that arrest is irrelevant to the issues on appeal.

AFFIRMED in part; DISMISSED in part.