

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AUG 14 2017

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DARRYL JOHN DEPASTINO, a.k.a.
Darryl J. De Pastino, a.k.a. Darryl
Depastino, a.k.a. David A. Depastino, a.k.a.
David Allen Depastino, a.k.a. Darryl R.
Johnson, a.k.a. Edward Robert Johnson,

Defendant-Appellant.

No. 16-50478

D.C. No. 2:09-cr-01303-SJO

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
S. James Otero, District Judge, Presiding

Submitted August 9, 2017**

Before: SCHROEDER, TASHIMA, and M. SMITH, Circuit Judges.

Darryl John Depastino appeals from the district court's judgment and challenges the 18-month sentence imposed upon revocation of supervised release.

* 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).

We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Depastino contends that the district court procedurally erred by relying on unsupported assumptions regarding his methadone usage and its impact on his ability to participate in a residential drug treatment program. We review for plain error, *see United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010), and conclude that there was none. Contrary to Depastino's contention, the court's factual findings are supported by the record. *See United States v. Graf*, 610 F.3d 1148, 1157 (9th Cir. 2010) ("A finding is clearly erroneous if it is illogical, implausible, or without support in the record.").

AFFIRMED.