

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 19 2018

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 18-10140

Plaintiff-Appellee,

D.C. No. 1:11-cr-00392-DAD

v.

MICHAEL DESHAWN CHARLES,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of California
Dale A. Drozd, District Judge, Presiding

Submitted December 17, 2018**

Before: WALLACE, SILVERMAN, and McKEOWN, Circuit Judges.

Michael DeShawn Charles appeals from the district court's judgment and challenges the 18-month sentence imposed upon revocation of his supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Charles argues that his sentence is substantively unreasonable because the

* 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).

circumstances surrounding his violations of supervision were not sufficiently aggravating to justify the court's upward variance from the Guidelines range of 7-13 months. 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 Charles's repeated refusals to cooperate with the terms of supervision and the fact that he absconded for nine months while on supervision. *See Gall*, 552 U.S. at 51. Moreover, contrary to Charles's claim, the record as a whole reflects that the district court properly considered the section 3583(e) sentencing factors and adequately explained its reasons for imposing an above-Guidelines sentence. *See Rita v. United States*, 551 U.S. 338, 359 (2007).

AFFIRMED.