

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 11 2020

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 19-30137

Plaintiff-Appellee,

D.C. No. 9:05-cr-00053-DWM-1

v.

MEMORANDUM\*

NIGEL GRAHAM ERNST,

Defendant-Appellant.

Appeal from the United States District Court  
for the District of Montana  
Donald W. Molloy, District Judge, Presiding

Submitted February 4, 2020\*\*

Before: FERNANDEZ, SILVERMAN, and TALLMAN, Circuit Judges.

Nigel Graham Ernst appeals from the district court's judgment and challenges the 78-month sentence imposed upon his fourth revocation of supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Ernst contends that the district court erred by failing to consider adequately

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\* 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 18 U.S.C. § 3583(e) sentencing factors and relying on the need to promote respect for the law, which is an improper consideration in a revocation proceeding. 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 considered and relied upon only proper sentencing factors, including Ernst's repeated breach of the court's trust. *See* 18 U.S.C. § 3583(e); *United States v. Simtob*, 485 F.3d 1058, 1062-63 (9th Cir. 2007).

Ernst also contends that the sentence is substantively unreasonable. 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 section 3583(e) sentencing factors and the totality of the circumstances, including Ernst's extensive history of non-compliance and the need for deterrence. *See Gall*, 552 U.S. at 51; *Simtob*, 485 F.3d at 1063.

**AFFIRMED.**