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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JOSEPH WOLOSZYN, AKA BJ the General, AKA Joe Bread, AKA JB, AKA Jay Squeeza, AKA Squeeze, Defendant-Appellant.	No. 21-10286 D.C. Nos. 2:18-cr-00007-JAM-1 MEMORANDUM*

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

Submitted November 18, 2022**
San Francisco, California

Before: TASHIMA and PAEZ, Circuit Judges, and SESSIONS,*** District Judge.

Joseph Woloszyn appeals the district court's judgment revoking his

* 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 Honorable William K. Sessions III, United States District Judge for the District of Vermont, sitting by designation.

supervised release and the sentence imposed upon revocation. On appeal, Woloszyn challenges the sufficiency of the evidence as to each violation. He also raises procedural and substantive challenges to his sentence. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

1. *Revocation of Supervised Release*. We review the district court's decision to revoke a term of supervised release for abuse of discretion. *United States v. Verduzco*, 330 F.3d 1182, 1184 (9th Cir. 2003). "On a sufficiency-of-the-evidence challenge to a supervised release revocation, we ask whether, viewing the evidence in the light most favorable to the government, any rational trier of fact could have found the essential elements of a violation by a preponderance of the evidence." *United States v. King*, 608 F.3d 1122, 1129 (9th Cir. 2010) (citation omitted).

Charge 1: Illegal Drug Use. There was sufficient evidence for the district court to find that Woloszyn used illegal drugs. Woloszyn's probation officer testified that on November 16, 2020, Woloszyn admitted he would test positive for marijuana and methamphetamine if a drug test were administered. The probation officer did not administer a drug test because he believed Woloszyn's statement constituted sufficient evidence of his drug use. On appeal, Woloszyn argues the government failed to provide "independent corroboration" of his statement, in violation of the *corpus delicti* rule, which generally requires that a person's

confession be corroborated by independent evidence in order to serve as the basis for a conviction. *United States v. Lopez-Alvarez,* 970 F.2d 583, 589 (9th Cir. 1992). This argument is foreclosed by *United States v. Hilger*, where we held that the *corpus delicti* rule does not apply to supervised release revocation proceedings. 728 F.3d 947, 949 (9th Cir. 2013). Like the defendant in *Hilger,* Woloszyn had the opportunity to cross-examine his probation officer about the veracity of his statement. *Id.* at 951. On cross-examination, counsel confirmed that Woloszyn admitted to using marijuana and methamphetamine. Thus "the district court's decision to credit [Woloszyn's admission] was amply supported by the record." *Id.* at 953.

Charge 3: Failure to Report for Drug Testing. There was sufficient evidence to support the court's finding that Woloszyn failed to report for drug testing on March 10, 2021, in violation of the terms of his supervised release. As a threshold matter, the government was required to prove only that Woloszyn *knowingly* failed to report for drug testing, not that he *willfully* failed to do so. Although the supervised release condition in question does not specify a mens rea element, we generally presume that knowledge is the default standard. *See, e.g., United States v. Phillips*, 704 F.3d 754, 768 (9th Cir. 2012) (explaining that we "imported a mens rea element . . . that the defendant was prohibited from *knowingly* associating with members of a criminal street gang"); *United States v.*

Napulou, 593 F.3d 1041, 1045 (9th Cir. 2010) (construing a condition as prohibiting "only *knowing* contact with persons with misdemeanor convictions"); *see also United States v. Vega*, 545 F.3d 743, 750 (9th Cir. 2008).

Here, the government presented ample evidence that Woloszyn knowingly failed to report for a drug test. Woloszyn's probation officer testified that he called Woloszyn on March 8, 2021, and directed him to report to the probation office at 10:00 a.m. on March 10, 2021. Woloszyn failed to appear, reportedly because he was unable to obtain transportation to the probation office. Woloszyn does not dispute that he was aware he had to report for drug testing as a condition of his supervised release, he received and understood the probation officer's instruction to report, and yet he did not appear. There was sufficient evidence for the district court to find that Woloszyn knowingly violated this term of his supervised release.

Charge 5: New State Law Violation (Criminal Threats). Finally, there was sufficient evidence for the district court to find that Woloszyn committed criminal threats in violation of California Penal Code section 422(a). The government presented the testimony of Alberto De La Torre, the landlord and owner of the Bell Terrace Apartments in Sacramento. De La Torre testified that Woloszyn went to Bell Terrace on April 10, 2021 to retrieve an identification card that he had left at the property. De La Torre refused to allow Woloszyn onto the property because, over the previous three to four weeks, Woloszyn had continuously visited the

property, "shown violence," and "attacked" people "physically." When Woloszyn became angry that he could not retrieve his identification card, he threatened to crash his car into the building and return with a gun and shoot everyone present. Woloszyn then used a knife to slash all four tires on De La Torre's truck. Another witness, Ernesto De La Torre, corroborated De La Torre's testimony.

Woloszyn argues that his threats failed to convey "a gravity of purpose and an immediate prospect of execution." Cal. Penal Code § 422(a). This argument lacks merit. Woloszyn's statements were "sufficiently unequivocal, unconditional, immediate, and specific" to violate section 422(a), "based on all the surrounding circumstances." *People v. Mendoza*, 69 Cal. Rptr. 2d 728, 732 (Ct. App. 1997). Although De La Torre may not have known whether Woloszyn had the means to crash a car into the building or shoot anyone at that exact moment, "Section 422 does not require an immediate ability to carry out the threat." *People v. Smith*, 100 Cal. Rptr. 3d 471, 474 (Ct. App. 2009) (citations omitted). It is sufficient that Woloszyn made specific, credible threats to harm De La Torre while in his immediate presence.

2. *Sentence.* We review a sentence imposed in the context of revocation of supervised release for reasonableness. *United States v. Cate*, 971 F.3d 1054, 1057 (9th Cir. 2020). The reasonableness standard requires us to ask whether the trial court abused its discretion. *United States v. Apodaca,* 641 F.3d 1077, 1079 (9th

Cir. 2011) (citation omitted). We employ a two-step analysis in applying this standard: "we first consider whether the district court committed significant procedural error, then we consider the substantive reasonableness of the sentence." *Id.* at 1081-81 (citation omitted).

The district court did not commit procedural error in sentencing Woloszyn to 24 months of imprisonment and 12 months of supervised release. In doing so, the district court adequately considered the sentencing factors set forth in 18 U.S.C. § 3553(a), including the nature of the violations and Woloszyn's history and characteristics. Woloszyn argues that the court improperly overlooked his acceptance of responsibility, the difficult circumstances he faced leading up to the violations, and the potentially harsh sentence he might receive in state court for vandalism and criminal threats. The district court, however, was well within its discretion to decide that the seriousness of Woloszyn's violations, including evidence that he committed two new crimes, outweighed any potentially mitigating factors. The court was also not required specifically to address on the record every sentencing factor it considered. *See Cate*, 971 F.3d at 1059. Rather, "the sentencing judge's statement of reasons was brief but legally sufficient." *Rita v. United States*, 551 U.S. 338, 358 (2007).

The sentence imposed was also not substantively unreasonable. "We afford significant deference to a district court's sentence under 18 U.S.C. § 3553 and

reverse only if the court applied an incorrect legal rule or if the sentence was 'illogical, implausible, or without support in inferences that may be drawn from the facts in the record.'" *United States v. Martinez-Lopez*, 864 F.3d 1034, 1043-44 (9th Cir. 2017) (citing *United States v. Hinkson*, 585 F.3d 1247, 1263 (9th Cir. 2009) (en banc)). A sentence of 24 months was within the guidelines range calculated by the district court. The district court's rationale for sentencing Woloszyn to a high-end sentence because of his criminal history and the seriousness of the violations is supported by the record. *See, e.g.*, *id.* at 1044 (upholding a within-guidelines range sentence for a recidivist defendant).

AFFIRMED.