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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. CLINTON WAYNE WARRINGTON, Defendant-Appellant.	No. 22-10082 DC No. 2:18-cr-00146-KJD MEMORANDUM[*]

Appeal from the United States District Court
for the District of Nevada
Kent J. Dawson, District Judge, Presiding

Argued and Submitted November 18, 2022
San Francisco, California

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

Clinton Wayne Warrington appeals from the district court's judgment

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

revoking supervised release and imposing a 13-month sentence. We have jurisdiction under 28 U.S.C. § 1291. We affirm the district court's decision to revoke supervised release, but vacate Warrington's sentence and remand for resentencing.

1. Warrington contends that the district court erred by denying his motion for a one-week continuance so he could undergo a full psychiatric evaluation by a third party, which could have supported his claim that he suffers from fetal alcohol syndrome disorder. Applying the four-factor test from *United States v. Rivera-Guerrero*, 426 F.3d 1130, 1138–39 (9th Cir. 2005), we conclude that the district court did not abuse its discretion in denying the continuance. As reflected in Warrington's presentence report and sentencing memorandum, which were prepared in connection with his 2019 conviction, Warrington has long stated that he suffers from fetal alcohol syndrome disorder. However, his medical records show that none of his prior psychological evaluations, one of which was conducted just a few months before the revocation hearing, has resulted in a diagnosis of fetal alcohol syndrome disorder. Although Warrington's counsel asserted that an evaluation could be conducted even without a continuance, he did not explain how he would obtain such an evaluation in the short period of time he was requesting. *Cf. United States v. Pope*, 841 F.2d 954, 957 (9th Cir. 1988)

(concluding the fact that a psychiatrist "was available and had expressed a willingness to conduct the examination, indicates his testimony could have been obtained had the court granted the continuance"). Given these circumstances, and the lack of likelihood that yet another psychiatric evaluation would have produced a different result, the district court did not abuse its discretion in denying the one-week continuance, and we affirm its decision to revoke supervised release.

2. Turning to his sentence, Warrington contends that the district court impermissibly sought to promote rehabilitation when it selected the length of his sentence, in contravention of the Supreme Court decision in *Tapia v. United States*, 564 U.S. 319, 335 (2011), and our decision in *United States v. Grant*, 664 F.3d 276, 279–80 (9th Cir. 2011) (applying *Tapia* to revocation proceedings). Because Warrington did not raise this claim below, we review for plain error. *See id.* at 279. The district court discussed, in general terms, the need to impose more than a "slap on the wrist" to obtain Warrington's compliance with his supervised release terms. However, the only specific explanation the court provided for its selection of a 13-month sentence was that "the defendant needs to be designated to the medical facility . . . and for a sufficient period of time to figure out if he, in fact, needs medication." Because this statement may reflect that the district court chose a 13-month sentence to meet Warrington's rehabilitative needs, the court plainly

erred. *See Tapia*, 564 U.S. at 321–22; *Grant*, 664 F.3d at 279.

We also agree with Warrington that the district court plainly erred by failing to calculate the Guidelines range at sentencing. The court did not announce the range, and nothing in the record shows that the court was aware of the applicable range or that it used the range as a "starting point" for its sentencing decision. *See Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1910 (2018).

Together, these errors suggest that Warrington may have received a lower sentence had the district court followed proper sentencing procedures. Accordingly, we exercise our discretion to vacate Warrington's sentence and remand for resentencing. *See United States v. Olano*, 507 U.S. 725, 732 (1993) (holding that court of appeals should exercise its discretion to correct a forfeited error if the error "seriously affects the fairness, integrity or public reputation of judicial proceedings" (cleaned up)); *United States v. Hammons*, 558 F.3d 1100, 1105-06 (9th Cir. 2009) (holding that all four prongs of the plain error standard were met because the district court might have imposed a longer sentence as a result of its errors).

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In light of this disposition, we do not reach Warrington's remaining sentencing claims.

Revocation of supervised release **AFFIRMED;** sentence **VACATED;** and **REMANDED for resentencing.**