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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHRISTOPHER TODD SMITH,

Defendant - Appellant.

No. 11-30374

D.C. No. 2:04-cr-06004-RHW

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Robert H. Whaley, District Judge, Presiding

Submitted November 13, 2012 \*\*

Before: CANBY, TROTT, and W. FLETCHER, Circuit Judges.

Christopher Todd Smith appeals from the 24-month sentence imposed upon revocation of supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Smith first contends that the district court imposed a substantively unreasonable sentence. In light of the fact that this was Smith's fifth revocation offense, the 24-month sentence is substantively reasonable. *See* 18 U.S.C. § 3583(e); *United States v. Miqbel*, 444 F.3d 1173, 1182 (9th Cir. 2006) (at a revocation sentencing, the district court may sanction the defendant for his breach of trust).

Smith next contends that his counsel provided ineffective assistance by failing to provide proof of his enrollment in school and by failing to interview a witness before the witness testified. Although ineffective assistance of counsel claims are generally not considered on direct appeal, the record here is sufficiently developed to permit consideration of this claim. *See United States v. Alferahin*, 433 F.3d 1148, 1160 n.6 (9th Cir. 2006). Smith's claim fails because even if his counsel's performance were deficient, it did not prejudice him. *See Strickland v. Washington*, 466 U.S. 668, 693-94 (1984).

**AFFIRMED.**