

DEC 31 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAIME FREGOSO-RODRIGUEZ,

Defendant - Appellant.

No. 12-50168

D.C. No. 3:06-cr-00263-GT

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Gordon Thompson, Jr., District Judge, Presiding

Submitted December 19, 2012**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Jaime Fregoso-Rodriguez appeals from the district court’s judgment and challenges the 12-month sentence imposed upon revocation of supervised release. Fregoso-Rodriguez contends that the court procedurally erred at sentencing and imposed a substantively unreasonable sentence. We review unpreserved claims of

* 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).

procedural error for plain error, *see United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010), and the substantive reasonableness of a sentence for abuse of discretion. *See Gall v. United States*, 552 U.S. 38, 51 (2007). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Fregoso-Rodriguez contends that the district court procedurally erred by failing to appreciate its discretion under *Kimbrough v. United States*, 552 U.S. 85 (2007), to deviate from the Sentencing Guidelines based on policy grounds. The district court entertained Fregoso-Rodriguez's policy-based arguments in favor of a variance and implicitly rejected them. Absent some contrary indication in the record, we assume that district judges understand the law. *See United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc).

Fregoso-Rodriguez also contends that the district court failed to explain the sentence sufficiently and, in particular, to respond adequately to his mitigating arguments. However, the issues at sentencing were "conceptually simple," and the record makes clear that the district judge considered the parties' arguments; no more was required. *See Rita v. United States*, 551 U.S. 338, 359 (2007). There was no plain error.

Fregoso-Rodriguez finally contends that his sentence is substantively unreasonable. The sentence is substantively reasonable in light of the 18 U.S.C.

§ 3583(e) sentencing factors and the totality of the circumstances. *See Gall*, 552
U.S. at 51.

AFFIRMED.