

AUG 26 2016

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NOT FOR PUBLICATION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.

ERNEST JOSEPH BISSON,

Defendant-Appellant.

No. 15-30274

D.C. No. 6:95-cr-60087-MC-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael J. McShane, District Judge, Presiding

Submitted August 16, 2016**

Before: O'SCANNLAIN, LEAVY, and CLIFTON, Circuit Judges.

Ernest Joseph Bisson appeals from the district court's judgment and challenges the 12-month consecutive sentence imposed upon revocation of supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* 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).

Bisson contends that the district court should not have imposed any prison time for his supervised release violation because he served 189 months for his underlying conviction, 69 months more than the 120 month statutory maximum that he contends would apply under *Johnson v. United States*, 135 S. Ct. 2551 (2015). Even assuming that Bisson is correct that he served too much time for his underlying conviction, his claim fails. It is undisputed that Bisson was on supervised release when he committed the violation. The record shows that the district court took into account Bisson's *Johnson* argument and imposed a below-Guidelines sentence. The court's failure to impose an even lower sentence was not an abuse of discretion. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The sentence is substantively reasonable in light of the 18 U.S.C. § 3583(e) factors and the totality of circumstances, including Bisson's poor performance on supervision. *See Gall*, 552 U.S. at 51; *United States v. Simtob*, 485 F.3d 1058, 1062-63 (9th Cir. 2007).

AFFIRMED.