

OCT 03 2016

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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NOT FOR PUBLICATION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.

EARL SCOTT CHESNUT,

Defendant-Appellant.

No. 15-30368

D.C. No. 3:10-cr-00259-BR

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Anna J. Brown, District Judge, Presiding

Submitted September 27, 2016**

Before: TASHIMA, SILVERMAN, and M. SMITH, Circuit Judges.

Earl Scott Chesnut appeals from the district court's judgment and challenges the sentence of 12 months and one day imposed upon the revocation of supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Chesnut contends that the district court violated his right to due process by

* 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).

basing the sentence on inaccurate information regarding one of his prior convictions. We review for plain error, *United States v. Vanderwerfhorst*, 576 F.3d 929, 934 (9th Cir. 2009), and find none. The government concedes that it erroneously referred to one of Chesnut's prior convictions as being for assault and menacing when it was, in fact, just for menacing. However, the record reflects the district court did not rely on this misstatement in imposing Chesnut's sentence. Rather, the record demonstrates that the district court properly based the sentence on Chesnut's history of domestic violence and breach of the court's trust. *See* 18 U.S.C. § 3583(e); *United States v. Miqbel*, 444 F.3d 1173, 1182 (9th Cir. 2006). Accordingly, there was no due process violation. *See United States v. Christensen*, 732 F.3d 1094, 1106 (9th Cir. 3013) (to establish a due process violation, defendant must show that the challenged information "was demonstrably made the basis for the sentence imposed").

Chesnut's unopposed motion to supplement the record is granted.

AFFIRMED.