

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 27 2017

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 16-30282

Plaintiff-Appellee,

D.C. No. 1:16-cr-00006-SPW

v.

MEMORANDUM*

JOSEPH C. MORRISON, Jr.,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Montana
Susan P. Watters, District Judge, Presiding

Submitted October 23, 2017**

Before: LEAVY, WATFORD, and FRIEDLAND, Circuit Judges.

Joseph C. Morrison, Jr., appeals from the district court's judgment and challenges the 96-month sentence imposed following his guilty-plea conviction for involuntary manslaughter, in violation of 18 U.S.C. §§ 1112(a) and 1153(a). 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).

Morrison contends that the district court failed to consider mitigating factors, such as his diminished capacity and alcohol addiction, and imposed a substantively unreasonable sentence. The record reflects that the court considered the testimony of the clinical psychologist who examined Morrison, as well as Morrison's other mitigating arguments, and concluded that an upward variance was nevertheless warranted. The court did not abuse its discretion. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The above-Guidelines sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including the nature of the offense and Morrison's history of drunk driving and other violent behavior. *See Gall*, 552 U.S. at 51.

AFFIRMED.