

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 22 2018

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 17-10221

Plaintiff-Appellee,

D.C. No. 4:14-cr-00507-FRZ

v.

MEMORANDUM*

FRANCISCO GARCIA-GASTELUM,
a.k.a. Francisco Garcia,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Arizona
Frank R. Zapata, District Judge, Presiding

Submitted August 15, 2018**

Before: FARRIS, BYBEE and N.R. SMITH, Circuit Judges.

Francisco Garcia-Gastelum appeals from the district court's judgment revoking his supervised release and challenges the six-month sentence imposed upon revocation. We have jurisdiction under 28 U.S.C. § 1291, and we dismiss.

Garcia-Gastelum argues he should have received a downward variance due

* 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).

to his previous mental incapacity. Because Garcia-Gastelum has fully served his custodial sentence and is not subject to an additional term of supervised release, we dismiss the appeal as moot. *See United States v. Palomba*, 182 F.3d 1121, 1123 (9th Cir. 1999); *see also United States v. King*, 891 F.3d 868, 869–70 (9th Cir. 2018).

DISMISSED.