

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 13 2020

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 19-50142

Plaintiff-Appellee,

D.C. No. 2:03-cr-00223-PA-1

v.

MEMORANDUM*

ALFONZO DARNELL TOLBERT, AKA
Al, AKA Alan Blaylock, AKA Alvin
Blaylock, AKA Alvin “Al” Blaylock, AKA
Lilal, AKA Alfonso Darnell Tolbert, AKA
Alfonzo Tolbert, AKA Alfonzo Daniel
Tolbert, AKA Alfonzo Darnel Tolbert, AKA
Alonzo Darnell Tolbert, AKA Willywest,

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted January 8, 2020**

Before: CALLAHAN, NGUYEN, and HURWITZ, Circuit Judges.

Alfonzo Darnell Tolbert appeals from the district court’s judgment and

* 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).

challenges the 15-month sentence imposed on remand for resentencing following the revocation of his supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Tolbert contends the district court procedurally erred by failing to calculate the correct Guidelines range and use it as the starting point for the sentence. The district court did not plainly err. *See United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010). The record reflects that the court was aware of the undisputed Guidelines range and used that range as the benchmark from which it varied upward. *See United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) (en banc). Tolbert has failed to show a reasonable probability that he would have received a different sentence had the court expressly calculated the Guidelines range. *See United States v. Dallman*, 533 F.3d 755, 762 (9th Cir. 2008).

Tolbert also contends that the district court impermissibly imposed the sentence in order to promote his rehabilitation. The district court did not plainly err, *see United States v. Grant*, 664 F.3d 276, 279 (9th Cir. 2011), because the record does not suggest that the court imposed or lengthened the sentence to promote rehabilitation. *See Tapia v. United States* 564 U.S. 319, 334 (2011) (district court does not run afoul of 18 U.S.C. § 3582(a) by “discussing the opportunities for rehabilitation within prison”).

AFFIRMED.