

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 29 2021

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 20-50147

Plaintiff-Appellee,

D.C. No. 3:17-cr-04079-LAB-1

v.

CARLOS MANUEL OLIVERA-
FERNANDEZ,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted April 20, 2021**

Before: THOMAS, Chief Judge, TASHIMA and SILVERMAN, Circuit Judges.

Carlos Manuel Olivera-Fernandez appeals from the district court's judgment and challenges the 18-month sentence imposed on his revocation of supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Olivera-Fernandez contends that the district court failed to make an

* 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).

individualized determination of the sentence when it rejected his pandemic-related mitigating argument. We need not resolve the parties' dispute over the applicable standard of review because there was no error, plain or otherwise.

Although the district court noted that Olivera-Fernandez's pandemic-related mitigating argument would apply to other defendants, the court rejected the argument only after finding that Olivera-Fernandez did not have any health factors putting him at greater risk of illness from COVID-19. The district court considered Olivera-Fernandez's breach of the court's trust and the applicable 18 U.S.C. § 3553(a) factors, including the need for deterrence. On this record, the district court complied with its obligation to make an individualized determination of the proper sentence based on defendant-specific facts. *See United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) (en banc).

AFFIRMED.