

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 20 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 21-50156

Plaintiff-Appellee,

D.C. No. 3:20-cr-10140-BAS-1

v.

MIGUEL ORTEGA-RODRIGUEZ,

MEMORANDUM*

Defendant-Appellant.

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

Submitted July 12, 2022**

Before: SCHROEDER, R. NELSON, and VANDYKE, Circuit Judges.

Miguel Ortega-Rodriguez appeals from the district court's judgment and challenges the 12-month consecutive sentence imposed upon revocation of his supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Ortega-Rodriguez contends that the district court procedurally erred 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).

violated due process by failing to afford him the opportunity to be heard as to whether his admitted violation warranted revocation. We review for plain error, *see United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010), and conclude that there is none. In light of the court's statements at sentencing, at which it permitted Ortega-Rodriguez to allocute and rejected his request for a fully concurrent revocation sentence, Ortega-Rodriguez has not shown a reasonable probability that, absent the alleged error, the district court would have elected not to revoke supervised release. *See United States v. Dallman*, 533 F.3d 755, 762 (9th Cir. 2008).

Ortega-Rodriguez next argues that the district court erred by failing to explain its reasons for the revocation sentence and to respond to his mitigating arguments. However, the court acknowledged Ortega-Rodriguez's family-related mitigating arguments and explained that Ortega-Rodriguez's criminal history, and the failure of his prior sentences to deter him, justified an aggregate sentence of 36 months. The court did not plainly err in failing to say more. *See Valencia-Barragan*, 608 F.3d at 1108; *United States v. Perez-Perez*, 512 F.3d 514, 516-17 (9th Cir. 2008).

AFFIRMED.