

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 18 2023

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 23-50040

Plaintiff-Appellee,

D.C. No. 2:04-cr-01677-JFW-3

v.

MEMORANDUM*

JAMES NICOLAS AVILA,

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted December 12, 2023**

Before: WALLACE, LEE, and BUMATAY, Circuit Judges.

James Nicolas Avila appeals from the district court's judgment and challenges the 30-month sentence imposed upon the revocation of his supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Avila contends that his sentence is substantively unreasonable because it

* 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).

does not account for his post-violation rehabilitation during his state incarceration and because the district court may have improperly punished him for the criminal conduct underlying his violation. The district court did not abuse its discretion. *See Gall v. United States*, 552 U.S. 38, 51 (2007). Contrary to Avila’s suggestion, the district court properly considered the seriousness of his violation conduct as a factor “contributing to the severity of [Avila’s] breach of trust.” *United States v. Simtob*, 485 F.3d 1058, 1063 (9th Cir. 2007). Moreover, the district court took Avila’s rehabilitative efforts into account and, although it found these efforts to be “remarkable,” acted within its broad discretion in concluding that a 30-month sentence was warranted. *See United States v. Gutierrez-Sanchez*, 587 F.3d 904, 908 (9th Cir. 2009) (“The weight to be given the various factors in a particular case is for the discretion of the district court.”). The high-end Guidelines sentence is substantively reasonable in light of the 18 U.S.C. § 3583(e) factors and the totality of the circumstances. *See Gall*, 552 U.S. at 51.

AFFIRMED.