

APR 21 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DEVIN DENMARK,

Defendant - Appellant.

No. 07-50566

D.C. No. CR-00-01325-MMM-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Margaret M. Morrow, District Judge, Presiding

Submitted April 13, 2009**

Before: GRABER, GOULD, and BEA, Circuit Judges.

Devin Denmark appeals from the 12-month sentence imposed following revocation of supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Denmark contends that the district court procedurally erred by relying on clearly erroneous facts concerning his prior criminal history. This contention is belied by the record. *See United States v. Cantrell*, 433 F.3d 1269, 1280 n.4 (9th Cir. 2006); *see also United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

Denmark further contends that the district court applied an incorrect criminal history category because the district court did not grant him a downward departure that he had received at the time of his original sentencing. We conclude that Denmark has not met his burden of demonstrating reversible error under the plain error standard. *See U.S.S.G. § 7B1.4*, cmt. n.1; *see also United States v. Olano*, 507 U.S. 725, 734 (1993).

AFFIRMED.