

OCT 07 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NOT FOR PUBLICATION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.

URIEL VALENCIA-ARIAS,

Defendant - Appellant.

No. 09-50127

D.C. No. 3:02-cr-03270-GT

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Gordon Thompson, District Judge, Presiding

Submitted September 14, 2009**

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Uriel Valencia-Arias appeals from the sentence of imprisonment imposed following the revocation of his supervised release. We have jurisdiction pursuant to 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).

Valencia-Arias contends that the district court failed to “acknowledge” his argument at sentencing that he not be incarcerated on account of a medical condition. The record reflects, however, that the court considered Valencia-Arias’s argument, and imposed a sentence that took Valencia-Arias’s condition into account. Accordingly, the district court did not procedurally err. *See Rita v. United States*, 551 U.S. 338, 358 (2007).

Valencia-Arias also contends that the district court treated the sentencing guidelines as mandatory. The record belies that contention as well. The court correctly noted at the hearing that the sentencing guidelines are advisory. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008).

To the extent that Valencia-Arias contends that the district court procedurally erred because it failed to express on the record that it considered each of the relevant sentencing factors of 18 U.S.C. § 3553(a), the contention lacks merit because the district court responded to Valencia-Arias’s sole argument raised at the hearing. *See Carty*, 520 F.3d at 992-93 (9th Cir. 2008) (en banc) (“The district court need not tick off each of the § 3553(a) factors to show that it has considered them.”)

AFFIRMED.