

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 14 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DEON ANDRE SMITH,

Defendant - Appellant.

No. 08-50338

D.C. No. 2:07-cr-00601-DDP

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Dean D. Pregerson, District Judge, Presiding

Submitted August 11, 2009\*\*

Before: KLEINFELD, M. SMITH, and IKUTA, Circuit Judges.

Deon Andre Smith appeals from the 77-month sentence imposed following his guilty-plea conviction for bank robbery, in violation of 18 U.S.C. § 2113(a).

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\* 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).

We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Smith contends that the district court plainly erred by treating two of his prior offenses as unrelated for purposes of calculating his criminal history score. Because Smith's offenses were separated by an intervening arrest, the district court properly treated his offenses as unrelated. *See United States v. Gallegos-Gonzalez*, 3 F.3d 325, 328 (9th Cir. 1993).

Smith also contends that the district court plainly erred by assessing two criminal history points for a 1996 misdemeanor burglary conviction. The government concedes that Smith should not have received points for that conviction, but contends that Smith is not entitled to relief because Smith's criminal history category would have remained the same. We agree with the government. *See United States v. Olano*, 507 U.S. 725, 734-35 (1993); *United States v. Lopez-Cavasos*, 915 F.2d 474, 476 (9th Cir. 1990).

**AFFIRMED.**