

DEC 22 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JEREMY MICHAEL PACE,

Defendant - Appellant.

No. 08-30277

D.C. No. 3:08-CR-00186-KI

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Garr M. King, District Judge, Presiding

Submitted December 9, 2009**
Portland, Oregon

Before: FARRIS, D.W. NELSON and BERZON, Circuit Judges.

Jeremy Michael Pace (“Pace”) appeals from the sentence imposed following his guilty-plea conviction for bank fraud in violation of 18 U.S.C. § 1344(1). 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).

Pace contends that the district court erred in calculating his criminal history category. At an earlier federal sentencing, the district court determined that two of Pace's state convictions were relevant conduct to the federal charge and therefore did not assess any criminal history points for those convictions. Pace contends that the district court is prohibited from assessing criminal history points for those state convictions in the instant offense. The record reflects that the district court properly counted the prior state offenses separately, and therefore there was no error in calculating Pace's criminal history with respect to the instant offense. *See* U.S.S.G. § 4A1.2(a)(2) and cmt. n. 1; *United States v. Marler*, 527 F.3d 874, 878 n.1 (9th Cir. 2008).

AFFIRMED.