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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>ROGER BENSON,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 09-30166

D.C. No. 2:08-CR-06069-LRS

MEMORANDUM *

Appeal from the United States District Court
for the Eastern District of Washington
Lonny R. Suko, Chief District Judge, Presiding

Submitted January 11, 2010**

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Roger Benson appeals from the 33-month sentence imposed following his guilty-plea conviction for escape from custody, in violation of 18 U.S.C. § 751.

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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Benson contends that the district court plainly erred when it failed to give him credit for the time served on an undischarged concurrent state sentence, under U.S.S.G. § 5G1.3(b)(1).

Benson's contention lacks merit because the state sentence did not result from "relevant conduct," *see* U.S.S.G § 1B1.3, and was not used to increase Benson's base offense level. *Cf. United States v. Armstead*, 552 F.3d 769, 783-84 (9th Cir. 2008).

AFFIRMED.