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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NOT FOR PUBLICATION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>STEVEN BITNER,</p> <p style="text-align: center;">Defendant - Appellant.</p>
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No. 09-30170

D.C. No. 1:07-CR-00143-RFC-1

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Montana  
Richard F. Cebull, Chief District Judge, Presiding

Submitted March 2, 2010\*\*  
Portland, Oregon

Before: PAEZ, TALLMAN, and M. SMITH, Circuit Judges.

Defendant-Appellant Steven Bitner appeals the denial of his Motion for Change of Venue filed under Federal Rule of Criminal Procedure 21(b) (“Rule 21 motion”). Bitner was indicted in the District of Montana and charged with

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

advertisement of child pornography and distribution of child pornography. Bitner, a resident of Oregon, filed the Rule 21 motion requesting the matter be transferred to the District of Oregon. After the district court denied that motion, he entered into a conditional plea agreement which allowed him to appeal the denial of the motion. We have jurisdiction pursuant to 28 U.S.C. § 1291 and affirm.

The district court did not abuse its discretion in denying Bitner's Rule 21 motion. It properly identified and applied the factors listed in *Platt v. Minnesota Mining & Manufacturing Co.*, 376 U.S. 240, 243–44 (1964), to determine whether Bitner's case should have been transferred. It is not our function to reweigh the factors once we are satisfied that the district court applied the appropriate criteria. *Id.* at 244–45.

**AFFIRMED.**