

JUN 21 2010

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NOT FOR PUBLICATION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.

DAVID PHILLIPS,

Defendant - Appellant.

No. 09-30291

D.C. No. 9:03-cr-00037-DWM

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

David Phillips appeals from the 27-month sentence imposed following his guilty-plea conviction for perjury/false declarations before U.S. Courts, in violation of 18 U.S.C. § 1623. 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Phillips contends that his 27-month sentence, to run consecutively to his undischarged federal sentences, is unreasonable because it punishes conduct already accounted for by his federal sentences for probation revocation and escape. The record reflects that the district court did not procedurally err and that, in light of the totality of the circumstances, the within-Guidelines sentence is substantively reasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *see also United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc). The district court properly imposed the consecutive sentences in order to punish each separately and distinctly offensive act. *See United States v. Simtob*, 485 F.3d 1058, 1063 (9th Cir. 2007).

AFFIRMED.