

OCT 04 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NOT FOR PUBLICATION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.

ALFONZO HECTOR PENA,

Defendant - Appellant.

No. 09-30363

D.C. No. 9:09-cr-00004-DWM

MEMORANDUM*

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

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

Alfonzo Hector Pena appeals from the 188-month sentence imposed following his guilty-plea conviction for possession with intent to sell of 50 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 846 and 841(a)(1). 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).

Pena contends that his sentence is substantively unreasonable because the career offender enhancement under U.S.S.G. § 4B1.1(a) over-represents the seriousness of Pena's past offenses and does not account for the nature and circumstances of the offense or Pena's history and characteristics. The record reflects that the district court correctly determined that the career offender enhancement applies, that it has considered and addressed all of the factors set forth in 18 U.S.C. § 3553(a), and that it did not otherwise procedurally err. *See United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc); *see also United States v. Diaz-Argueta*, 564 F.3d 1047, 1051-52 (9th Cir. 2009). The record further reflects that, under the totality of the circumstances, Pena's sentence is substantively reasonable. *See Gall v. United States*, 552 U.S. 38, 51-52 (2007); *see also United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc).

AFFIRMED.