

OCT 28 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NOT FOR PUBLICATION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.

JOHN DWIGHT DEHART, a.k.a.
Trapper,

Defendant - Appellant.

No. 10-30083

D.C. No. 9:09-cr-00042-DWM

MEMORANDUM*

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

Submitted October 19, 2010**

Before: O'SCANNLAIN, TALLMAN, and BEA, Circuit Judges.

John Dwight Dehart appeals from his 18-month sentence imposed following his guilty-plea conviction for being an unlawful user of controlled substance in possession of a firearm, in violation of 18 U.S.C. § 922(g)(3). We have

* 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).

jurisdiction under 28 U.S.C. § 1291, and we affirm.

Dehart contends that the district court violated 18 U.S.C. § 3582(a), which states in relevant part that “[t]he court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation.”

Dehart’s contention fails because the record as a whole, including the district court’s response to Dehart’s objection, indicates that the district court determined that other section 3553(a) factors warranted imprisonment, while Dehart’s extraordinary medical circumstances warranted a sentence below the Sentencing Guidelines range and placement in a federal medical facility. *See United States v. Duran*, 37 F.3d 557, 561 (9th Cir. 1994) (indicating that “[o]nce imprisonment is chosen as a punishment . . . § 3582 does not prohibit consideration of correction and rehabilitation in determining the length of imprisonment”).

AFFIRMED.