

OCT 29 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NOT FOR PUBLICATION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 PAUL PETERS,

Defendant - Appellant.

No. 09-30384

D.C. No. 9:09-cr-00023-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.

David Paul Peters appeals from his 262-month sentence imposed following his guilty-plea conviction for conspiracy to possess with intent to distribute heroin, in violation of 21 U.S.C. §§ 841(b)(1)(B) and 846. 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).

Peters contends that his counsel was ineffective by failing to challenge the district court's finding that the conspiracy started in 2005, giving rise to a career offender designation that led to a higher advisory guidelines range. Although we generally do not address claims of ineffective assistance of counsel on direct review, we can consider the merits where the record on appeal is sufficiently developed to permit determination of the issue. *See United States v. Alferahin*, 433 F.3d 1148, 1160-61 n.6 (9th Cir. 2006). The record reflects that Peters's counsel was not deficient, nor was Peters prejudiced by any possibly deficient performance. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984).

AFFIRMED.