

OCT 29 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>STEVEN PAUL PETERS,</p> <p>Defendant - Appellant.</p>
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No. 09-30387

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.

Steven Paul Peters appeals from his low-end 70-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 the district court imposed a substantively unreasonable sentence because the sentence fails to sufficiently account for the time served on a state sentence for the same conduct. The record reflects that the district court did not procedurally err, *see United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc), and that, under the totality of the circumstances, the sentence at the bottom of the guidelines range is substantively reasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *see also Carty*, 520 F.3d at 993.

AFFIRMED.