

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NOT FOR PUBLICATION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.

MICHAEL ANTHONY PETERS,

Defendant - Appellant.

No. 09-30388

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.

Michael Anthony Peters appeals from his 120-month mandatory minimum 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 mandatory minimum sentence is substantively unreasonable because it is greater than necessary under 18 U.S.C. § 3553(a). Peters's contention is foreclosed. *United States v. Wipf*, No. 09-50291, 2010 WL 3398258, at *2 (9th Cir. 2010) (Section 3553 does not authorize a court to impose a sentence below the mandatory statutory minimum.).

AFFIRMED.