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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NOT FOR PUBLICATION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>TRAVIS LEE HESS,</p> <p>Defendant - Appellant.</p>

No. 11-30064

D.C. No. 4:10-cr-00087-SEH

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted November 8, 2011**

Before: O'SCANNLAIN, TASHIMA, and GRABER, Circuit Judges.

Travis Lee Hess appeals from the 174-month sentence imposed following his guilty-plea conviction for possession with intent to distribute cocaine/aiding and abetting, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. 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).

Hess contends that the district court erred by applying the career offender enhancement because it significantly overrepresents the magnitude of his criminal conduct in this case. The district court did not procedurally err. The record reflects that the court considered the relevant sentencing factors under 18 U.S.C. § 3553(a), in conjunction with Hess's arguments in mitigation, but found the circumstances insufficient to justify a variance below the career offender guideline. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

Hess also contends that the sentence imposed is greater than necessary to achieve the statutory goals of sentencing. The district court's sentence within the applicable Guidelines range is substantively reasonable under the totality of the circumstances and in light of the sentencing factors set forth in 18 U.S.C. § 3553(a). *See Gall v. United States*, 552 U.S. 38, 51 (2007).

AFFIRMED.