

SEP 01 2010

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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NOT FOR PUBLICATION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 style="text-align: center;">Plaintiff - Appellee,</p> <p>v.</p> <p>BRETT HAHN,</p> <p style="text-align: center;">Defendant - Appellant.</p>
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No. 09-30244

D.C. No. 9:06-cr-00064-DWM

MEMORANDUM*

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

Submitted August 10, 2010**

Before: LEAVY, HAWKINS, and IKUTA, Circuit Judges.

Brett Hahn appeals from the 46-month sentence imposed following remand for resentencing. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Hahn contends the district court procedurally erred when it imposed a consecutive sentence on remand without giving him credit for the 902 days he

* 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).

served in state custody. The district court's decision to depart from section 5G1.3(b) of the Sentencing Guidelines by imposing a consecutive sentence obviated the requirement that Hahn be granted credit for time spent in state custody under section 5G1.3(b)(1). Moreover, the district court's explanation for its sentence was sufficient to allow for meaningful appellate review. *See Rita v. United States*, 551 U.S. 338, 356-59 (2007); *United States v. Carty*, 520 F.3d 984, 991-92, 995 (9th Cir. 2008) (en banc).

Hahn's motion to expedite appellate review is denied as moot.

AFFIRMED.