

DEC 13 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NOT FOR PUBLICATION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>Plaintiff - Appellee,</p> <p>v.</p> <p>TIMOTHY JAMES BUTLER,</p> <p>Defendant - Appellant.</p>
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No. 09-30362

D.C. No. 1:03-cr-00131-BLW

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, Chief District Judge, Presiding

Submitted December 6, 2010**

Before: GOODWIN, RYMER, and GRABER, Circuit Judges.

Timothy James Butler appeals from the 160-month sentence imposed upon resentencing following a successful 28 U.S.C. § 2255 motion. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Butler contends that the district court procedurally erred by limiting its

* 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).

consideration of his post-sentence rehabilitation in order to avoid unwarranted sentencing disparities. The record reflects that the district court fully considered Butler's post-sentence rehabilitation, in conjunction with the remaining 18 U.S.C. § 3553(a) sentencing factors, when it granted a 21-month downward variance from the advisory Guidelines range. *See United States v. Green*, 152 F.3d 1202, 1207-08 (9th Cir. 1998) (per curiam). The district court did not procedurally err, and the sentence imposed is substantively reasonable in light of the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *see also United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc).

AFFIRMED.