

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NOT FOR PUBLICATION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 style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>MICHAEL ANTHONY PETERS,</p> <p style="text-align: center;">Defendant - Appellant.</p>
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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.