

APR 11 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

THOMAS GRAHAM,

Defendant - Appellant.

No. 10-50230

D.C. No. 2:08-cr-00490-DSF

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Submitted April 5, 2011**

Before: B. FLETCHER, CLIFTON, and BEA, Circuit Judges.

Thomas Graham appeals from the 100-month sentence imposed following his conviction for possession with intent to distribute heroin, in violation of 21 U.S.C. §§ 851(a)(1) and 841(b)(1)(B)(i). 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).

Graham contends that the district court procedurally erred by applying the career offender enhancement under U.S.S.G. § 4B1.1(a)(3) based on previous convictions resulting from nolo contendere pleas in the California state court. California courts treat a plea of nolo contendere as the equivalent of a guilty plea conviction. *See United States v. Anderson*, 625 F.3d 1219, 1220 (9th Cir. 2010) (per curiam). Because Graham was convicted of qualifying previous felonies, the district court's application of the career offender enhancement was not clearly erroneous. *See, e.g., United States v. Williams*, 47 F.3d 993, 995 (9th Cir. 1995).

AFFIRMED.