

JUL 23 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSEPH P. RYNCARZ,

Defendant - Appellant.

No. 08-30179

D.C. No. 2:01-cr-00015-FVS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Fred L. Van Sickle, District Judge, Presiding

Submitted July 14, 2009**

Before: SCHROEDER, THOMAS, and WARDLAW, Circuit Judges.

Joseph P. Ryncarz appeals pro se from the district court's order denying his 18 U.S.C. § 3582(c)(2) motion for modification of sentence. We have jurisdiction pursuant to 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 finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Ryncarz contends that Amendment 709 to the United States Sentencing Guidelines, changing the manner in which multiple prior sentences are counted in the computation of criminal history scores, applies retroactively to lower his criminal history score and offense level, thereby entitling him to be resentenced under § 3582(c)(2). The district court correctly determined that Amendment 709 does not apply retroactively. *See United States v. Morgan*, 376 F.3d 1002, 1010-1011 (9th Cir. 2004); *see also United States v. Marler*, 527 F.3d 874, 878 n.1 (9th Cir. 2008). Even if Amendment 709 were applied retroactively, it would not benefit Ryncarz because it would have no effect on his properly calculated Guidelines range. *See United States v. Townsend*, 98 F.3d 510, 513 (9th Cir. 1996) (per curiam).

AFFIRMED.