

OCT 05 2009

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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NOT FOR PUBLICATION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>CYRUS BRASWELL,</p> <p>Defendant - Appellant.</p>

No. 08-30332

D.C. No. 3:97-cr-00068-JKS

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
James K. Singleton, Senior District Judge, Presiding

Submitted September 14, 2009**

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Cyrus Braswell appeals pro se from the district court's order granting his 18 U.S.C. § 3582(c)(2) motion for reduction 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).

Braswell contends that he was denied his Sixth Amendment right to self-representation during his § 3582(c)(2) proceeding to modify his sentence.

Assuming *arguendo* that the district court erred by not granting his request, any error was harmless because the court allowed Braswell the opportunity to file a supplemental brief raising any issues not addressed by court-appointed counsel, and subsequently explained why a § 3582(c)(2) proceeding was not the proper vehicle to raise those issues. *Cf. United States v. Maness*, 566 F.3d 894, 897 (9th Cir. 2009) (per curiam).

Braswell also contends that the district court erred by limiting the issues on resentencing to a consideration of whether and to what extent he was entitled to a sentence reduction under § 3582(c)(2) based upon the revised Guideline and the factors set forth in 18 U.S.C. § 3553(a), and refusing to address his challenges to the original sentencing enhancements and to the sufficiency of the indictment. The district court did not err. By its plain terms § 3582(c)(2) applies only to sentences and not convictions. *See* 18 U.S.C. § 3582(c)(2). In addition, Guideline application decisions unrelated to the amendment remain unaffected by a § 3582(c)(2) motion. *See* U.S.S.G. § 1B1.10(b), cmt. n. 2 (2008).

AFFIRMED.