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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NOT FOR PUBLICATION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.

EMERT REGINALD FLOWERS,

Defendant - Appellant.

No. 09-30046

D.C. No. 3:01-CR-00271-BR-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Anna J. Brown, District Judge, Presiding

Submitted November 4, 2009
Portland, Oregon

Before: KOZINSKI, Chief Judge, FISHER and PAEZ, Circuit Judges.

Emert Reginald Flowers appeals from the district court's order denying his motion to reduce sentence under 18 U.S.C. § 3582(c). We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *United States v. Leniear*, 574 F.3d 668, 672 (9th Cir. 2009), and affirm.

*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

The district court did not err by concluding that it lacked jurisdiction under 18 U.S.C. § 3582(c)(2) to modify Flowers' sentence. Flowers would have been subject to the same sentencing range had Amendment 706 been in place at the time he was sentenced. *See* U.S.S.G. § 4B1.1 (2001) (providing that the career offender base offense level applies where it is greater than the applicable base offense level under § 2D1.1). Accordingly, Flowers' "sentence is not 'based on a sentencing range that has subsequently been lowered by the Sentencing Commission,' as required by § 3582(c)(2)." *Leniear*, 574 F.3d at 673 (quoting 18 U.S.C. § 3582(c)(2)).

AFFIRMED.