

DEC 14 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NOT FOR PUBLICATION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.

JOHN FITZGERALD HARRIS,

Defendant - Appellant.

No. 08-10367

D.C. No. 2:03-cr-00421-SMM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Stephen M. McNamee, District Judge, Presiding

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

John Fitzgerald Harris appeals from the district court's denial of his motion to reduce his sentence under 18 U.S.C. § 3582(c)(2). 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).

Harris contends the district court erred by denying his § 3582(c)(2) motion because his sentence was based on a range that has been lowered by Amendment 706 to the United States Sentencing Guidelines. The district court lacked authority to reduce Harris' below-guidelines sentence because the record demonstrates that Harris' sentence was not based on the Guidelines. *See United States v. Bride*, 581 F.3d 888, 891 (9th Cir. 2009).

AFFIRMED.