

JAN 26 2010

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NOT FOR PUBLICATION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 D. CLEMENTS,

Defendant - Appellant.

No. 09-10153

D.C. No. 2:98-cr-00402-LDG

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Lloyd D. George, District Judge, Presiding

Submitted January 11, 2010**

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Joseph D. Clements appeals from the district court's order denying his motion for a sentence reduction under 18 U.S.C. § 3582(c)(2) based on the

* 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).

retroactive application of Amendment 706 to the Sentence Guidelines provisions governing crack cocaine. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Clements contends that the district court erred by denying his motion for a sentence reduction under Amendment 706 because his sentence was based, in part, on a sentencing range calculated under the Drug Quantity Table in U.S.S.G. § 2D1.1. This contention fails because Clements qualified as a career offender under U.S.S.G. § 4B1.1. Because the district court sentenced Clements based on a sentencing range calculated under § 4B1.1, he is not eligible for a sentence reduction under Amendment 706. *See United States v. Wesson*, 583 F.3d 728, 731 (9th Cir. 2009).

AFFIRMED.