

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 03 2010

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RAYMOND EUGENE COTHARN,

Defendant - Appellant.

No. 08-30230

D.C. No. 1:01-cr-00065-CCL

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Charles C. Lovell, District Judge, Presiding

Submitted November 17, 2009**

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

Raymond Eugene Cotharn appeals from the district court's order denying his 18 U.S.C. § 3582(c)(2) motion for a 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).

Cotharn contends that the district court erred in denying his motion for resentencing pursuant to the retroactive amendments to the crack cocaine Sentencing Guidelines. The district court did not err in denying the motion because Cotharn was sentenced as a career offender pursuant to U.S.S.G. § 4B1.1. *See United States v. Wesson*, 583 F.3d 728, 731 (9th Cir. 2009).

Moreover, Cotharn's contention that the district court had authority under *United States v. Hicks*, 472 F.3d 1167 (9th Cir. 2007), to resentence him pursuant to the advisory Guidelines lacks merit. *See* U.S.S.G § 1B1.10 cmt. n.1(A) (2008); *see also United States v. Leniear*, 574 F.3d 668, 673-74 (9th Cir. 2009).

AFFIRMED.