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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NOT FOR PUBLICATION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>TONY CARZELL GREEN,</p> <p>Defendant - Appellant.</p>
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No. 08-30270

D.C. No. 3:98-cr-05067-BHS

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Benjamin H. Settle, District Judge, Presiding

Submitted November 17, 2009**

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

Tony Carzell Green 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).

Green 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 Green 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).

To the extent that Green argues that he is entitled to be resentenced under the advisory Guidelines pursuant to *United States v. Hicks*, 472 F.3d 1167 (9th Cir. 2007), this argument also lacks merit. 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.