

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 05 2010

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RAYMOND SHANNON, AKA Stuff

Defendant - Appellant.

No. 08-50180

D.C. No. 2:99-cr-01199

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Submitted March 16, 2010**

Before: PREGERSON, LEAVY, and RAWLINSON, Circuit Judges.

Raymond Shannon appeals from the district court's order denying his 18 U.S.C. § 3582(c)(2) motion for 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Shannon contends that Amendment 706 to the United States Sentencing Guidelines, retroactively amending U.S.S.G. § 2D1.1 with respect to offenses involving crack cocaine, authorizes the district court to resentence him. The district court did not err by concluding that it lacked jurisdiction pursuant to § 3582(c)(2) to modify Shannon’s sentence, as he 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 (2000) (providing that the career offender base offense level applies where it is greater than the applicable base offense level under § 2D1.1). Thus, Shannon’s “sentence is not ‘based on a sentencing range that has subsequently been lowered by the Sentencing Commission,’ as required by § 3582(c)(2).” *See United States v. Leniear*, 574 F.3d 668, 673 (9th Cir. 2009) (quoting 18 U.S.C. § 3582(c)(2)); *see also United States v. Wesson*, 583 F.3d 728, 731 (9th Cir. 2009).

Shannon’s motion to expedite this appeal for oral argument is denied.

AFFIRMED.