

APR 14 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NOT FOR PUBLICATION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.

DON BOGARD, AKA Michael R. Staten,
AKA Larry Donnell Bogard, Jr.,

Defendant - Appellant.

No. 09-50015

D.C. No. 2:91-cr-00777-WDK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
William D. Keller, District Judge, Presiding

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

Don Bogard appeals from the district court's order denying his motion for a sentence reduction pursuant to 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Bogard contends that the district court erred by failing to reduce his sentence based upon Amendment 709 of the United States Sentencing Guidelines. The district court did not err by concluding that such a reduction would be inconsistent with applicable policy statements issued by the Sentencing Commission. *See United States v. Paulk*, 569 F.3d 1094, 1095 (9th Cir. 2009) (per curiam); U.S.S.G. § 1B1.10(a)(2)(A), (c); *see also United States v. Marler*, 527 F.3d 874, 878 n.1 (9th Cir. 2008) (noting that Amendment 709 does not apply retroactively).

AFFIRMED.