

APR 21 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTOINE M. MERCADEL,

Defendant - Appellant.

No. 09-30280

D.C. No. 2:94-cr-00260-WFN

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Wm. Fremming Nielsen, District Judge, Presiding

Submitted April 5, 2010**

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

Antoine M. Mercadel appeals pro se from the district court's order denying his motion for a reduced sentence pursuant to 18 U.S.C. § 3582(c)(2). We have jurisdiction pursuant to 28 U.S.C. § 1291.

* 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).

Mercadel contends that the district court erred by denying his motion in light of Amendment 706 of the United States Sentencing Guidelines. This contention fails because Mercadel was sentenced pursuant to the statutory mandatory minimum. *See United States v. Paulk*, 569 F.3d 1094, 1095-96 (9th Cir. 2009) (per curiam) (“Paulk is not entitled to a reduction because his sentence was not based on a sentencing range that has subsequently been lowered by the Sentencing Commission, 18 U.S.C. § 3582(c)(2), but rather was based on the statutory mandatory minimum under 21 U.S.C. § 841.”) (internal quotation marks omitted).

Mercadel’s motion to stay proceedings is denied.

AFFIRMED.