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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NOT FOR PUBLICATION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 style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>ANDREW COLSON,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 08-10287

D.C. No. 2:03-CR-00559-RCJ

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, Presiding

Submitted July 19, 2010**

Before: B. FLETCHER, REINHARDT, and WARDLAW, Circuit Judges.

Andrew Colson appeals from the district court’s order granting his 18 U.S.C. § 3582(c)(2) motion for sentence reduction. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Colson contends that the district court relied on impermissible factors when

* 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).

it determined that he posed a potential danger to the community. The district court did not err when it relied on Colson's criminal history, the nature and circumstances of the offense, and a prison disciplinary violation. *See Dillon v. United States*, No. 09-6338, 2010 WL 2400109 at *6-7 (Jun. 17, 2010); U.S.S.G. § 1B1.10, cmt. 1(B)(iii).

Colson also contends that even if the factors relied upon by the district court were permissible, remand is appropriate so that this court may provide the district court with guidance as to what factors it may consider when applying the Sentencing Guidelines "Public Safety Consideration" policy statement articulated in U.S.S.G. § 1B1.10. Because the district court relied upon permissible factors any guidance would constitute an improper advisory opinion. *See United States v. Kaczynski*, 551 F.3d 1120, 1124 (9th Cir. 2009).

AFFIRMED.