

SEP 29 2010

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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NOT FOR PUBLICATION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>QUINTIN STEPHEN,</p> <p>Defendant - Appellant.</p>

No. 09-50147

D.C. No. 2:94-cr-00254-SGL

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stephen G. Larson, District Judge, Presiding

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

Quintin Stephen appeals from the district court’s order denying his motion under 18 U.S.C. § 3582(c)(2) for a reduced sentence. We have jurisdiction under 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).

Stephen contends that the district court erred by failing to reduce his sentence in light of Amendment 706 to the United States Sentencing Guidelines. Because the record reflects that Stephen's original sentence was not "based on a sentencing range that has subsequently been lowered by the Sentencing Commission," the district court did not err. *See Dillon v. United States*, 130 S. Ct. 2683, 2690-91 (2010). Stephen's contention that the district court was entitled to treat the corresponding base offense levels and drug quantities in the Guidelines as advisory in light of *Booker* is foreclosed. *See id.* at 2690-92.

AFFIRMED.