

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 04 2010

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EFREN SANTIVANZ GOMEZ,

Defendant - Appellant.

No. 09-10520

D.C. No. 5:00-cr-20273-JW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
James Ware, District Judge, Presiding

Submitted September 13, 2010**

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

Federal prisoner Efren Santivaz Gomez appeals pro se from the district court's denial of his motion to reduce his 140-month sentence pursuant to 18 U.S.C. § 3582(c)(2). 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).

Gomez contends that the district court erred by failing to reduce his sentence based on Amendment 709 of the United States Sentencing Guidelines. The district court did not err because the sentence was not based on a sentencing range that has since been lowered by the Sentencing Commission. *See United States v. Paulk*, 569 F.3d 1094, 1095 (9th Cir. 2009) (per curiam). Moreover, Amendment 709 to U.S.S.G. § 4A1.2(c)(1) would not affect the assignment of criminal history points to Gomez's prior offenses. *See* U.S.S.G. § 4A1.2(c).

AFFIRMED.