

OCT 05 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NOT FOR PUBLICATION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.

JAIME DIAZ-ASPINA,

Defendant - Appellant.

No. 09-50044

D.C. No. 2:91-cr-00827-WDK

MEMORANDUM*

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

Submitted September 13, 2010**

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

Jaime Diaz-Aspina appeals from the district court’s order denying his second 18 U.S.C. § 3582(c)(2) motion to modify his sentence. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Following the district court’s grant of his first motion to modify his sentence

* 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).

in 1996, reducing his sentence from 310 months to 293 months, Diaz-Aspina now contends, pursuant to *United States v. Booker*, 534 U.S. 220 (2005), and *United States v. Hicks*, 472 F.3d 1167 (9th Cir. 2006), that he is entitled to a full resentencing proceeding so that the district court may consider a further sentence reduction. This contention is foreclosed. *See Dillon v. United States*, 130 S.Ct. 2683, 2692-93 (2010) (concluding that neither the constitutional nor the remedial aspects of *Booker* apply to a resentencing proceeding under § 3582(c)(2)).

AFFIRMED.