

DEC 27 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NOT FOR PUBLICATION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.

DWAYNE ALLEN FALCONER,

Defendant - Appellant.

No. 09-55165

D.C. No. 2:92-cr-00749-SVW

MEMORANDUM*

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

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and W. FLETCHER, Circuit Judges.

Dwayne Allen Falconer appeals pro se from the district court's order denying his 18 U.S.C. § 3582(c)(2) motion 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).

Falconer contends that he is entitled to a reduced sentence in light of the crack-cocaine amendments to the U.S. Sentencing Guidelines. Falconer's contention fails because he was previously sentenced as a career offender under U.S.S.G. § 4B1.1, and was thus not sentenced "based on a sentencing range that has subsequently been lowered by the Sentencing Commission," as required by 18 U.S.C. § 3582(c)(2). *See United States v. Wesson*, 583 F.3d 728, 730-32 (9th Cir. 2009).

AFFIRMED.