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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NOT FOR PUBLICATION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>RICARDO RUIZ,</p> <p style="text-align: center;">Defendant - Appellant.</p>
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No. 10-50169

D.C. No. 3:07-cr-02965-JTM

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Jeffrey T. Miller, District Judge, Presiding

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Ricardo Ruiz appeals pro se from the district court’s order denying his 18 U.S.C. § 3582(c)(2) motion to reduce his sentence and, in the alternative, construing his motion as a 28 U.S.C. § 2255 motion and denying the same. 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).

To the extent that Ruiz challenges the district court's denial of his § 3582(c)(2) motion, his appeal lacks merit because he fails to demonstrate that his sentence is based on a sentencing range that has subsequently been lowered by the Sentencing Commission, as required by § 3582(c)(2). *See United States v. Leniear*, 574 F.3d 668, 673 (9th Cir. 2009); *see also United States v. Paulk*, 569 F.3d 1094, 1095-96 (9th Cir. 2009) (per curiam).

To the extent that Ruiz appeals from the district court's denial of a § 2255 motion, we construe his notice of appeal as a request for a certificate of appealability on the issues in his opening brief. So construed, the request is denied. *See* 9th Cir. R. 22-1(e); *see also Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir.1999) (per curiam).

AFFIRMED.