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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NOT FOR PUBLICATION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>RICARDO RUIZ,</p> <p>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.