

MAY 26 2011

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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NOT FOR PUBLICATION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>OLANCE ANTJUAN UPTON,</p> <p>Defendant - Appellant.</p>
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No. 08-30357

D.C. No. 3:05-cr-00299-BR

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Anna J. Brown, District Judge, Presiding

Submitted May 24, 2011**

Before: PREGERSON, THOMAS, and PAEZ, Circuit Judges.

Olance Antjuan Upton appeals from the 168-month sentence imposed in the district court’s order granting his 18 U.S.C. § 3582(c)(2) motion for reduction of 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. Accordingly, we deny Upton’s request for oral argument. *See Fed. R. App. P. 34(a)(2).*

Upton contends that the district court erred at the § 3582(c)(2) proceeding by: (1) failing to provide a sufficient explanation for the sentence imposed; (2) failing to address adequately the 100:1 crack/powder disparity; and (3) imposing a sentence greater than necessary to achieve the sentencing goals of 18 U.S.C. § 3553(a). These contentions are unpersuasive because § 3582(c)(2) proceedings do not implicate the interests identified in *United States v. Booker*, 543 U.S. 220 (2005). *See Dillon v. United States*, 130 S. Ct. 2683, 2692-93 (2010). Moreover, the district court complied with the two-step inquiry set forth in § 3582(c)(2). *See id.* at 2691-92.

To the extent that Upton contends that U.S.S.G. § 1B1.10(b) lacks administrative validity, his contention is foreclosed by *United States v. Fox*, 631 F.3d 1128, 1131-32 (9th Cir. 2011).

AFFIRMED.