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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NOT FOR PUBLICATION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>JUAN FRANCISCO VALERA,</p> <p>Defendant - Appellant.</p>

No. 09-30136

D.C. No. 3:99-CR-00036-HRH

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
H. Russel Holland, District Judge, Presiding

Submitted May 24, 2011**

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

Juan Francisco Valera appeals from the 262-month sentence imposed following the district court’s order granting 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.

Valera contends that the district court erred at the section 3582(c)(2)

* 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).

proceeding by: (1) concluding that the Sentencing Commission has the authority to limit the district court's ability to look at the 18 U.S.C. § 3553(a) factors when imposing a modified sentence; (2) failing to address adequately the 100:1 crack/powder disparity; and (3) treating the Guidelines as mandatory. These contentions are foreclosed by *Dillon v. United States*, 130 S. Ct. 2683, 2692-93 (2010) (section 3582(c)(2) proceedings do not implicate the Sixth Amendment interests identified in *United States v. Booker*, 543 U.S. 220 (2005)).

Valera also contends the policy statement articulated in U.S.S.G. § 1B1.10 is invalid because it was promulgated in violation of procedural requirements. This contention is foreclosed by *United States v. Fox*, 631 F.3d 1128, 1131-33 (9th Cir. 2011).

We deny the government's March 22, 2011, motion for summary affirmance as moot.

AFFIRMED.