

JUN 07 2011

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NOT FOR PUBLICATION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.

LAMAR EDISON, Jr.,

Defendant - Appellant.

No. 09-50306

D.C. No. 2:93-cr-00643-RGK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Submitted May 24, 2011**

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

Lamar Edison, Jr., 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.

Edison contends the district court erred at the section 3582(c)(2) proceeding

* 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).

by treating the policy statement articulated in U.S.S.G. § 1B1.10(b) as binding, even though its promulgation and implementation violated the Separation of Powers doctrine and Administrative Procedure Act. This contention is foreclosed by *United States v. Fox*, 631 F.3d 1128, 1131-33 (9th Cir. 2011).

AFFIRMED.