

JUN 27 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NOT FOR PUBLICATION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.

ANTHONY MACKLIN,

Defendant - Appellant.

No. 09-10431

D.C. No. 2:95-cr-00258-LDG

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Lloyd D. George, District Judge, Presiding

Submitted June 15, 2011**

Before: CANBY, O'SCANNLAIN, and FISHER, Circuit Judges.

Anthony Macklin appeals from the district court's order denying 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. *See* Fed. R. App. P. 34(a)(2).

Macklin contends that the district court violated his Sixth Amendment right to due process and U.S.S.G. § 6A1.3, by considering prison disciplinary findings when denying his 18 U.S.C. § 3582(c)(2) motion because the conduct was contested and not proven by a preponderance of the evidence. Assuming that the Government was required to meet this burden, the record reflects that the burden was met. *See generally United States v. Dare*, 425 F.3d 634, 642 (9th Cir. 2005) (recognizing that, “[a]s a general rule, the preponderance of the evidence standard is the appropriate standard for factual findings used for sentencing”).

AFFIRMED.