

OCT 27 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NOT FOR PUBLICATION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>GARY PATRICK CALLAHAN,</p> <p>Defendant - Appellant.</p>

No. 10-10611

D.C. No. 2:89-cr-00178-GMS

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
G. Murray Snow, District Judge, Presiding

Submitted October 25, 2011**

Before: TROTT, GOULD, and RAWLINSON, Circuit Judges.

Gary Patrick Callahan 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.

Callahan contends that he is entitled to a sentence reduction based on

* 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).

Amendment 739 to the Sentencing Guidelines, which amended U.S.S.G. § 5H1.11 to allow a sentencing court to consider whether a defendant's military service is relevant in determining whether a departure is warranted. *See* U.S.S.G., Appendix C, Amendment 739 (2010). This claim lacks merit because Amendment 739 did not alter Callahan's applicable sentencing range, therefore his sentence is not "based on a sentencing range that has subsequently been lowered by the Sentencing Commission." *See United States v. Leniear*, 574 F.3d 668, 673 (9th Cir. 2009); 18 U.S.C. § 3582(c)(2). Moreover, a reduction in Callahan's term of imprisonment would not be "consistent with applicable policy statements issued by the Sentencing Commission." *See Leniear*, 574 F.3d 674; U.S.S.G. §1B1.10(a)(2).

To the extent that Callahan raises additional claims to support his request for a sentence reduction, those claims are not cognizable in a motion under 3582(c)(2).

AFFIRMED.