

FEB 22 2012

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NOT FOR PUBLICATION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.

JOSEPH TURNER, a.k.a. Michael W.
Daniels, a.k.a. Joseph J. Turner, a.k.a.
Michael J. Turner,

Defendant - Appellant.

No. 11-50145

D.C. No. 2:00-cr-00904-GHK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George H. King, District Judge, Presiding

Submitted February 21, 2012**

Before: FERNANDEZ, McKEOWN, and BYBEE, Circuit Judges.

Federal prisoner Joseph Turner appeals pro se the district court's order denying his motion to modify his term of imprisonment following jury-trial

* 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. Appellant. P. 34(a)(2).

convictions on, inter alia, two counts of using or carrying a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Turner contends that the district court erred in imposing a mandatory 25-year minimum sentence for a second conviction under 18 U.S.C. § 924(c), where the second offense was charged in the same indictment as the first offense. The district court did not err in determining that this claim is not cognizable under 18 U.S.C. § 3582(c). *See United States v. Lightfoot*, 626 F.3d 1092, 1096 (9th Cir. 2010) (section 3582(c)(2) permits modification only where sentencing range applicable to defendant has subsequently been lowered). In any event, this argument is without merit. *See United States v. Beltran-Moreno*, 556 F.3d 913, 915 (9th Cir. 2009) (“[W]hen the government charges more than one § 924(c) offense in a single indictment, each additional count is to be treated as a ‘second or subsequent conviction’ for purposes of 18 U.S.C. § 924(c)(1)(C)(i) and therefore carries a mandatory minimum sentence of twenty-five years.”)

AFFIRMED.