

MAR 13 2012

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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NOT FOR PUBLICATION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>BRIAN DARNELL BERKLEY, Sr.,</p> <p>Defendant - Appellant.</p>
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No. 11-50135

D.C. No. 2:04-cr-00198-TJH

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Terry J. Hatter, District Judge, Presiding

Submitted March 6, 2012**

Before: B. FLETCHER, REINHARDT, and TASHIMA, Circuit Judges.

Brian Darnell Berkley, Sr., appeals pro se from the district court’s order denying his 18 U.S.C. § 3582(c)(2) motion to modify his 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).

Berkley contends that the district court erred by declining to reduce his sentence based on Guidelines Amendment 599, which addresses the applicability of weapons enhancements for a defendant convicted of violating 18 U.S.C. § 924(c). This contention lacks merit because Amendment 599 went into effect five years before Berkley was sentenced. Therefore his sentence is not “based on a sentencing range that has subsequently been lowered by the Sentencing Commission,” as required by section 3582(c)(2). *See United States v. Leniear*, 574 F.3d 668, 673 (9th Cir. 2009).

AFFIRMED.