

SEP 20 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NOT FOR PUBLICATION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>BRUCE EDWARD JIMERSON,</p> <p>Defendant - Appellant.</p>

No. 12-10007

D.C. No. 2:01-cr-00335-LRH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Submitted September 10, 2012**

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Bruce Edward Jimerson appeals from the district court’s order denying his 18 U.S.C. § 3582(c)(2) motion for reduction of sentence based on the retroactive amendments to the Sentencing Guidelines that lowered penalties for crack cocaine

* 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).

offenses. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Jimerson contends that the district court violated his right to due process by failing to conduct an evidentiary hearing before denying a sentence reduction. The district court acted within its discretion when it denied Jimerson a sentence reduction based on numerous instances of prison misconduct and public safety concerns. *See* U.S.S.G. § 1B1.10 cmt. n.1(B); *United States v. Lightfoot*, 626 F.3d 1092, 1096 (9th Cir. 2010). The court did not violate Jimerson's due process rights by declining to conduct an evidentiary hearing concerning his prison misconduct, where Jimerson admitted to the misconduct in his section 3582(c)(2) motion.

AFFIRMED.