

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NOT FOR PUBLICATION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>FERNANDO CLAVERIA-MARTINEZ,</p> <p>Defendant - Appellant.</p>
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No. 12-10052

D.C. No. 2:97-cr-00080-PMP

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Philip M. Pro, District Judge, Presiding

Submitted September 10, 2012**

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

Fernando Claveria-Martinez appeals from the district court’s denial of 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).

Claveria-Martinez contends that the district court committed legal error because it did not understand the rationale behind the Fair Sentencing Act and did not follow the procedures set forth in section 3582(c)(2). The record reflects that the district court did not commit legal error and appropriately exercised its discretion to deny Claveria-Martinez's motion. *See United States v. Lightfoot*, 626 F.3d 1092, 1096 (9th Cir. 2010).

To the extent that Claveria-Martinez renews the contention made in his last appeal that the district court erred in departing upward in criminal history category at his original sentencing, we again conclude that his argument is not cognizable in a section 3582(c)(2) proceeding. *See Dillon v. United States*, 130 S. Ct. 2683, 2694 (2010).

AFFIRMED.