

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUN 21 2013

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICARDO CRUZAGOSTO,

Defendant - Appellant.

No. 12-30152

D.C. No. 3:02-cr-00100-HRH

MEMORANDUM*

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Appeal from the United States District Court
for the District of Alaska
H. Russel Holland, District Judge, Presiding

Submitted June 18, 2013**

Before: TALLMAN, M. SMITH, and HURWITZ, Circuit Judges.

Ricardo Cruzagosto appeals from the district court's order denying his motion under 18 U.S.C. § 3582(c)(2) for reduction of sentence. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Cruzagosto contends that he is entitled to a sentence reduction under Amendments 748 and 750 to the Sentencing Guidelines. We review de novo. *United States v. Leniear*, 574 F.3d 668, 672 (9th Cir. 2009). The district court

* 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).

correctly determined that it was without authority to reduce Cruzagosto's 168-month sentence, as that sentence was at the bottom of the amended advisory Sentencing Guidelines range. *See* 18 U.S.C. § 3582(c)(2) (permitting reduction of sentence only where "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission"); U.S.S.G. § 1B1.10(b)(2)(A) ("the court shall not reduce the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended guideline range").

Cruzagosto nonetheless argues that the district court should have treated his four-level variance as a "guideline application decision[]" entitled to consideration under U.S.S.G. § 1B1.10(b)(1). The language of and commentary to section 1B1.10(b)(2)(A) squarely foreclose his position. *See* U.S.S.G. § 1B1.10(b)(2)(A) & cmt. n.3 (subsection (b)(2)(A) applies even where the district court imposed a downward variance at sentencing).

AFFIRMED.