

OCT 10 2013

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NOT FOR PUBLICATION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.

JAY KENT,

Defendant - Appellant.

No. 12-10507

D.C. No. 3:08-CR-00890-MMC-2

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Maxine M. Chesney, Senior District Judge, Presiding

Submitted October 7, 2013\*\*  
San Francisco, California

Before: D.W. NELSON, M. SMITH, and IKUTA, Circuit Judges.

Jay Kent appeals the denial of his motion for reduction in sentence brought under 18 U.S.C. § 3582(c)(2). We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a), and we affirm.

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\* 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).

Assuming, without deciding, that Kent's motion for reduction in sentence did not violate his plea agreement, our holding in *United States v. Augustine*, 712 F.3d 1290 (9th Cir. 2013), forecloses Kent's arguments that the Fair Sentencing Act's mandatory minimums should apply retroactively to defendants sentenced before the Act was enacted. The district court did not abuse its discretion in denying Kent's § 3582(c)(2) motion.

**AFFIRMED.**