

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 05 2013

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RONALD HERBERT ELLIS, a.k.a.
Blaster,

Defendant - Appellant.

No. 12-50165

D.C. No. 2:05-cr-00995-RGK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Submitted November 19, 2013**

Before: CANBY, TROTT, and THOMAS, Circuit Judges.

Ronald Herbert Ellis appeals from the district court's order denying his second 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).

Ellis contends that he is entitled to a sentence reduction because the Fair Sentencing Act of 2010 (“FSA”) reduces the mandatory minimum sentence for his crack cocaine conviction and because subsequent amendments to the Sentencing Guidelines lowered the Guidelines range applicable to his offense. We review de novo whether the district court had authority to modify a defendant’s sentence under section 3582(c)(2). *See United States v. Austin*, 676 F.3d 924, 926 (9th Cir. 2012).

Ellis’s 120-month sentence was the statutory mandatory minimum at the time of sentencing. *See* 21 U.S.C. § 841(b)(1)(A) (2007). Because the FSA’s reduced mandatory minimums do not apply to defendants sentenced before its effective date, a reduction in Ellis’s sentence would not be consistent with the policy statements issued by the Sentencing Commission, and the district court therefore lacked authority to modify Ellis’s sentence. *See* 18 U.S.C. § 3582(c)(2); U.S.S.G § 1B1.10 cmt. n.1(A); *United States v. Augustine*, 712 F.3d 1290, 1295 (9th Cir. 2013).

AFFIRMED.