

OCT 20 2014

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NOT FOR PUBLICATION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.

RANDY MITCHELL, a.k.a. Frog,

Defendant - Appellant.

No. 13-50509

D.C. No. 2:08-cr-00571-CAS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Christina A. Snyder, District Judge, Presiding

Submitted October 14, 2014**

Before: LEAVY, GOULD, and BERZON, Circuit Judges.

Randy Mitchell appeals from the district court’s order denying his motion for a sentence reduction under 18 U.S.C. § 3582(c)(2). We have jurisdiction under 28 U.S.C. § 1291. We review de novo whether a district court has authority to modify a sentence under section 3582(c)(2), *see United States v. Pleasant*, 704

* 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)*.

F.3d 808, 810 (9th Cir.), *cert. denied*, 134 S. Ct. 824 (2013), and we affirm.

Mitchell contends that he is eligible for a sentence reduction under Amendment 750 to the Sentencing Guidelines. This contention fails because Mitchell was sentenced as a Career Offender under U.S.S.G. § 4B1.1. Thus, his sentence was not “based on” a Guidelines range that was lowered by the amendment. *See* 18 U.S.C. § 3582(c)(2); *United States v. Charles*, 749 F.3d 767, 770-71 (9th Cir. 2014). Moreover, a sentence reduction would not be consistent with U.S.S.G. § 1B1.10(a)(1), the applicable policy statement, because the applicable Guidelines here are the Career Offender Guidelines. *See* 18 U.S.C. § 3582(c)(2); *Pleasant*, 704 F.3d at 811-12. This is true even though the district court varied downward from the Career Offender range at sentencing. *See Pleasant*, 704 F.3d at 812. Mitchell’s contention that the district court erred when it determined at sentencing that he was a Career Offender is not cognizable in a section 3582(c)(2) proceeding. *See United States v. Waters*, 648 F.3d 1114, 1118 (9th Cir. 2011).

AFFIRMED.