

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 2 2015

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

OSCAR RAFAEL SERRANO,

Defendant - Appellant.

No. 14-10519

D.C. No. 1:02-cr-05319-LJO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, District Judge, Presiding

Submitted August 25, 2015**

Before: McKEOWN, CLIFTON, and HURWITZ, Circuit Judges.

Oscar Rafael Serrano appeals pro se from the district court's denying his motion for sentence reduction under 18 U.S.C. § 3582(c)(2). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Serrano contends that the district court erred by denying him a sentence

* 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).

reduction under Guidelines Amendment 782. We review de novo whether an amendment is applicable to a defendant's sentence. *See United States v. Paulk*, 569 F.3d 1094, 1095 (9th Cir. 2009) (per curiam). The district court correctly determined that if Amendment 782 had been in effect when Serrano was originally sentenced, it would not have affected his Guidelines range. *See U.S.S.G* § 1B1.10(b)(1). Because Amendment 782 did not lower Serrano's Guidelines range, the district court lacked authority to modify his sentence. *See 18 U.S.C.* § 3582(c)(2); *United States v. Waters*, 771 F.3d 679, 680 (9th Cir. 2014) (per curiam).

Serrano next contends that the district court erred because it failed to consider the 18 U.S.C. § 3553(a) sentencing factors in evaluating his motion. Because the district court correctly determined that a reduction was not authorized, it properly declined to consider the section 3553(a) factors. *See Dillon v. United States*, 560 U.S. 817, 826-27 (2010).

AFFIRMED.