

MAR 21 2016

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NOT FOR PUBLICATION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.

JOSE AGUILAR, Jr.,

Defendant - Appellant.

No. 15-30072

D.C. No. 1:11-cr-00004-BMM

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Brian M. Morris, District Judge, Presiding

Submitted March 15, 2016**

Before: GOODWIN, LEAVY, and CHRISTEN, Circuit Judges.

Jose Aguilar, Jr., 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 the district court has authority to

* 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).

modify a sentence under section 3582(c)(2), *see United States v. Leniear*, 574 F.3d 668, 672 (9th Cir. 2009), and we affirm.

Aguilar contends that he is eligible for a sentence reduction under Amendment 782 to the Sentencing Guidelines. The district court properly concluded that Aguilar is ineligible for a reduction because his 168-month sentence is already at the bottom of his amended guideline range. *See* U.S.S.G. § 1B1.10(b)(2)(A) (district court may not reduce a sentence “to a term that is less than the minimum of the amended guideline range”); *United States v. Davis*, 739 F.3d 1222, 1224 (9th Cir. 2014). Contrary to Aguilar’s contention, his “applicable guideline range” is determined without consideration of any departure or variance applied at his original sentencing. *See* U.S.S.G. § 1B1.10 cmt. n.1(A); *United States v. Pleasant*, 704 F.3d 808, 812 (9th Cir. 2013).

AFFIRMED.