

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NOT FOR PUBLICATION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.

DAVID DERRYBERRY,

Defendant - Appellant.

No. 15-30110

D.C. No. 9:11-cr-00015-DWM

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted March 15, 2016**

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

David Derryberry appeals from the district court's order granting 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.

The district court reduced Derryberry's sentence from 96 months to 92 months based on Amendment 782 to the Sentencing Guidelines. Derryberry contends that the district court erred by failing to reduce his sentence further. Because 92 months was the minimum of Derryberry's amended guideline range, the district court was precluded from reducing the sentence further. *See* U.S.S.G. § 1B1.10(b)(2)(A) (except in a case of a government motion for a departure based on substantial assistance, a district court "shall not reduce the defendant's term of imprisonment . . . 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 Derryberry's contention, the application of section 1B1.10(b)(2)(A) to his case does not violate the Ex Post Facto Clause because it did not "increase the punishment for his crime over what was imposed when he was sentenced." *See United States v. Waters*, 771 F.3d 679, 681 (9th Cir. 2014).

AFFIRMED.