

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 28 2016

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DANIEL GARCIA,

Defendant - Appellant.

No. 15-10326

D.C. No. 5:10-cr-00209-EJD

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Edward J. Davila, District Judge, Presiding

Submitted July 26, 2016**

Before: PREGERSON, LEAVY, and OWENS, Circuit Judges.

Daniel Garcia appeals pro se from the district court's order 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.

* 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).

Garcia contends that the district court erred in holding that it did not have authority to reduce his sentence under Guidelines Amendment 782. We review de novo whether a defendant is eligible for a sentence reduction. *See United States v. Pleasant*, 704 F.3d 808, 810 (9th Cir. 2013) *overruled on other grounds by United States v. Davis*, ___ F.3d ___ (9th Cir. 2016) (en banc).

Notwithstanding the terms of his plea agreement, Garcia was determined at sentencing to be a career offender. Thus, the district court correctly concluded that Garcia's applicable Guidelines range was not lowered by Amendment 782 and, as a result, he was ineligible for a sentence reduction. *See id.* at 811-12.

Garcia seeks to avoid this outcome by arguing that *Pleasant* was wrongly decided. We, however, are bound to follow it. *See United States v. Boitano*, 796 F.3d 1160, 1164 (9th Cir. 2015). Furthermore, contrary to Garcia's claim, the application of U.S.S.G. § 1B1.10 to his case does not violate the Ex Post Facto Clause because it does 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.