

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 21 2016

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 15-50452

Plaintiff-Appellee,

D.C. No. 3:07-cr-02882-BEN

v.

MEMORANDUM*

GUILLERMO BARRETO-ORTIZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted November 16, 2016**

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

Guillermo Barreto-Ortiz 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, and we affirm.

The government seeks the dismissal of this appeal as untimely. Because

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Barreto-Ortiz is a pro se prisoner, his notice of appeal (“NOA”) is deemed filed when it was delivered to prison authorities for forwarding to the court. *See* Fed. R. App. P. 4(c)(1). The record reflects, and the government does not dispute, that Barreto-Ortiz’s NOA was postmarked on October 15, 2015. Barreto-Ortiz’s NOA must, therefore, have been delivered to prison officials no later than that date. Because judgment was entered on October 1, 2015, his NOA was thus timely filed. *See* Fed. R. App. P. 4(b)(1)(A)(i), (c)(1).

Barreto-Ortiz contends that the district court abused its discretion by denying his motion for a sentence reduction under Amendment 782 to the Sentencing Guidelines. The district court acted within its discretion when it denied Barreto-Ortiz a sentence reduction based on its determination that he posed a threat to the public in light of the nature of the offense. *See* U.S.S.G. § 1B1.10 cmt. n.1(B); *United States v. Lightfoot*, 626 F.3d 1092, 1096 (9th Cir. 2010).

AFFIRMED.