

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i> v. ANDREW COLSON, <i>Defendant-Appellant.</i>
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No. 08-10287
D.C. No.
2:03-CR-00559-RCJ
ORDER

Appeal from the United States District Court
for the District of Nevada
Robert C. Jones, District Judge, Presiding

Submitted February 23, 2009*
San Francisco, California

Filed July 23, 2009

Before: Alex Kozinski, Chief Judge, Michael Daly Hawkins
and Ronald M. Gould, Circuit Judges.

COUNSEL

Franny A. Forsman, Federal Public Defender, Jason F. Carr,
Assistant Federal Public Defender, Las Vegas, Nevada, for
the appellant.

Gregory A. Browner, United States Attorney, Peter S. Levitt,
Assistant United States Attorney, Las Vegas, Nevada, for the
appellee.

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

ORDER

Andrew Colson (“Colson”) appeals the district court’s discretionary denial of his 18 U.S.C. § 3582(c)(2) sentence reduction motion. Although we have previously held that such decisions are not reviewable on appeal, *see United States v. Lowe*, 136 F.3d 1231, 1233 (9th Cir. 1998), Colson argues that *Lowe* is no longer good law in light of *United States v. Booker*, 543 U.S. 220 (2005), and *United States v. Carty*, 520 F.3d 984 (9th Cir. 2008) (en banc).

We agree. After *Booker* and *Carty* each of which held that any element of a sentencing decision, whether discretionary or not, may be “unreasonable” and therefore unlawful *Lowe*’s conclusion that discretionary sentencing decisions are unreviewable on appeal is no longer good law. We conclude that 18 U.S.C. § 3582(c)(2) sentence reduction decisions are reviewable in their entirety for abuse of discretion under 28 U.S.C. § 1291.

The order filed March 10, 2009, is hereby **VACATED**. The government’s Motion to Dismiss Appeal is **DENIED**, and its Motion to Toll Briefing Schedule During Pendency of Motion is **GRANTED**. The parties shall file their briefs within the time set forth in Federal Rule of Appellate Procedure 31(a), commencing from the filed date of this order.

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