NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. LINZEY SMITH, Defendant - Appellant.	No. 09-30167 D.C. No. 2:04-CR-00096-JLQ MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Justin L. Quackenbush, District Judge, Presiding

Submitted July 19, 2010**

Before: B. FLETCHER, REINHARDT, and WARDLAW, Circuit Judges.

Linzey Smith appeals pro se from the district court's order denying his 18 U.S.C. § 3582(c)(2) motion for modification of sentence. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Smith contends the district court erred by rejecting his argument that the

* 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).

enhancement of his sentence, once for being an armed career criminal under 18 U.S.C. § 924(e) and again for possessing a firearm in connection with a felony assault under U.S.S.G. § 2K2.1(b)(5), constituted impermissible "double counting" in contravention of Amendment 599 of the United States Sentencing Guidelines. This contention fails because the district court properly concluded that Amendment 599 does not apply to or modify the guidelines under which Smith was sentenced. *See* U.S.S.G. § 2K2.4; *see also United States v. Archdale*, 229 F.3d 861, 869 (9th Cir. 2000) (acknowledging that sentencing commission plainly understands concept of double counting and expressly forbids it where it is not intended).

Accordingly, we grant the government's motion for summary affirmance of the district court's judgment. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

AFFIRMED.