

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 3 2016

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LYLE GERALD JOHNS,

Defendant-Appellant.

No. 15-10562

D.C. No. 4:91-cr-00392-CKJ

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Cindy K. Jorgenson, District Judge, Presiding

Submitted September 27, 2016**

Before: TASHIMA, SILVERMAN, and M. SMITH, Circuit Judges.

Lyle Gerald Johns 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.

Johns contends that his sentence violates *Apprendi v. New Jersey*, 530 U.S.

* 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).

466 (2000), and that, prior to ruling on his motion for a sentence reduction under Amendment 782 to the Sentencing Guidelines, the district court should have corrected this error by recalculating the drug quantities attributable to him. We review de novo whether a district court had authority to modify a sentence under section 3582(c)(2). *See United States v. Leniear*, 574 F.3d 668, 672 (9th Cir. 2009). As the district court properly determined, Johns’s *Apprendi* claim cannot be raised in a 3582(c)(2) proceeding. *See Dillon v. United States*, 560 U.S. 817, 831 (2010) (alleged sentencing errors are “outside the scope of the proceeding authorized by § 3582(c)(2)”). Moreover, Johns is ineligible for a sentence reduction because Amendment 782 did not lower his applicable sentencing range. *See* 18 U.S.C. § 3582(c)(2); *Leniear*, 574 F.3d at 673-74.

Johns’s motion for release pending appeal is denied as moot.

AFFIRMED.