

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 17 2019

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 18-30194

Plaintiff-Appellee,

D.C. No. 1:97-cr-00045-SPW-5

v.

MEMORANDUM*

JULIO AQUIL,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Montana
Susan P. Watters, District Judge, Presiding

Submitted January 15, 2019**

Before: TROTT, TALLMAN, and CALLAHAN, Circuit Judges.

Julio Aquil appeals pro se 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.

Aquil contends that he is eligible for a sentence reduction under Amendment

* 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).

599 to the Sentencing Guidelines. 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). Amendment 599 provides that when a defendant has been convicted of both a drug trafficking offense and possession of a firearm in connection with that drug trafficking offense in violation of 18 U.S.C. § 924(c), a district court should not apply a firearm enhancement in calculating the guideline range applicable to the underlying drug trafficking offense. The record shows that the sentencing court did not apply a weapons enhancement when calculating the Guidelines range for Aquil's drug trafficking offenses.

Accordingly, Amendment 599 did not have the effect of lowering Aquil's guideline range, and the district court correctly concluded that he is ineligible for a sentence reduction. *See* 18 U.S.C. § 3582(c)(2); U.S.S.G. § 1B1.10(a)(2)(B); *Leniear*, 574 F.3d at 674.

AFFIRMED.