

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 18 2019

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 18-10204

Plaintiff-Appellee,

D.C. No. 1:09-cr-00142-LJO-3

v.

MICHAEL S. IOANE,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, Chief Judge, Presiding

Submitted January 15, 2019**

Before: TROTT, TALLMAN, and CALLAHAN, Circuit Judges

Michael S. Ioane 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.

Ioane contends that the district court erred by denying his motion for a

* 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).

sentence reduction under Amendment 791 to the Sentencing Guidelines, which amended the monetary loss table in U.S.S.G. § 2B1.1(b)(1). 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). The district court correctly denied Ioane’s motion because Amendment 791 is not a covered amendment under U.S.S.G. § 1B1.10(d). *See* U.S.S.G. § 1B1.10 cmt. n.1(A) (“Eligibility for consideration under 18 U.S.C. § 3582(c)(2) is triggered only by an amendment listed in subsection (d).”); *United States v. Ornelas*, 825 F.3d 548, 550 & n.3 (9th Cir. 2016). Because Ioane is ineligible for a sentence reduction, the district court could not grant a reduction based on his post-sentencing behavior or the 18 U.S.C. § 3553(a) sentencing factors. *See Dillon v. United States*, 560 U.S. 817, 826-27 (2010).

We do not reach Ioane’s other contentions regarding, inter alia, his conviction, initial sentencing, direct appeal, and motion for habeas relief under 28 U.S.C. § 2255, because these arguments are not cognizable in section 3582(c)(2) proceedings. *See Dillon*, 560 U.S. at 825-826, 831 (alleged errors unrelated to an amendment that lowers the defendant’s guideline range are outside the scope of a section 3582(c)(2) proceeding).

Ioane’s motion for an extension of time to file a reply brief is denied as moot because his reply brief was timely submitted. All other pending motions are

denied.

AFFIRMED.