

FILED

AUG 6 2021

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ERNESTO HERNANDEZ,

Defendant-Appellant.

No. 20-10226

D.C. No.

1:13-cr-00511-JMS-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
J. Michael Seabright, Chief District Judge, Presiding

Submitted August 4, 2021**
San Francisco, California

Before: THOMAS, Chief Judge, and HAWKINS and McKEOWN, Circuit Judges.

Ernesto Hernandez appeals pro se the district court's order denying his
motion to modify his term of imprisonment pursuant to 18 U.S.C.

§ 3582(c)(1)(A)(i). We review a district court's decision on a motion for

* 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).

modification of a term of imprisonment pursuant to 18 U.S.C. § 3582(c)(1) for abuse of discretion. *United States v. Aruda*, 993 F.3d 797, 799 (9th Cir. 2021). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The district court’s factual findings were supported by the record, and the court applied the correct law by determining whether “extraordinary and compelling reasons warrant[ed]” a reduction in Hernandez’s term of imprisonment and “considering the factors set forth in” 18 U.S.C. § 3553(a) “to the extent they [were] applicable[.]” 18 U.S.C. § 3582(c)(1)(A); *United States v. Keller*, 2 F.4th 1278, 1283–84 (9th Cir. 2021). Hernandez’s briefing alleges factual developments occurring after the district court’s decision, but this case does not fall within any exception to our rule that we do not consider matters outside the district court record on appeal. *Lowry v. Barnhart*, 329 F.3d 1019, 1024–25 (9th Cir. 2003). The district court did not abuse its discretion in denying Hernandez’s motion.

AFFIRMED.