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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p>v.</p> <p>WILSON THOMAS, a.k.a. Michael Deon Thomas,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 12-10300

D.C. No. 1:98-cr-05022-LJO

MEMORANDUM*

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

Submitted July 24, 2013**

Before: ALARCÓN, CLIFTON, and CALLAHAN, Circuit Judges.

Wilson Thomas appeals pro se from the district court’s order denying his 18 U.S.C. § 3582(c)(2) motion for reduction of sentence. We have jurisdiction under 28 U.S.C. § 1291. We review de novo whether the district court had authority to

* 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).

modify a defendant's sentence under section 3582(c)(2), *see United States v. Austin*, 676 F.3d 924, 926 (9th Cir. 2012), and we affirm.

Thomas contends that he is entitled to a sentence reduction based on the Fair Sentencing Act of 2010 ("FSA") and subsequent amendments to the Sentencing Guidelines. The government argues that Thomas's motion is barred by the law of the case. Because the government did not argue law of the case in the district court, that argument is waived. *See United States v. Trujillo*, 713 F.3d 1003, 1007-08 (9th Cir. 2013). Nevertheless, the district court properly denied Thomas's motion.

Thomas was sentenced to 120 months, the statutory mandatory minimum at the time of his sentencing. *See* 21 U.S.C. § 841(b)(1)(A) (1999). Although Thomas correctly observes that he would be subject to a lower statutory minimum were he sentenced today, the FSA does not apply to defendants sentenced before its effective date. *See United States v. Augustine*, 712 F.3d 1290, 1295 (9th Cir. 2013). Accordingly, Thomas is not entitled to relief under section 3582(c)(2).

AFFIRMED.