

AUG 01 2016

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NOT FOR PUBLICATION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.

EDISON SHINO,

Defendant - Appellant.

No. 15-10208

D.C. No. 1:03-cr-05453-LJO

MEMORANDUM*

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

Submitted July 26, 2016**

Before: SCHROEDER, CANBY, and CALLAHAN, Circuit Judges.

Edison Shino 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.

* 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).

Shino contends that he is entitled to a sentence reduction under Amendment 782 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. Waters*, 771 F.3d 679, 680 (9th Cir. 2014). As the district court correctly concluded, even assuming that Amendment 782 reduced Shino’s Guidelines range to 210-262 months, Shino is ineligible for a sentence reduction because his sentence is already below the minimum of that range. *See U.S.S.G. § 1B1.10(b)(2)(A)* (“[T]he court shall not reduce the defendant’s term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended guideline range.”). Moreover, as Shino acknowledges, his argument that applying section 1B1.10(b)(2)(A) to his case violates the Ex Post Facto Clause is foreclosed by our decision in *Waters*. *See Waters*, 771 F.3d at 681.

We decline to consider Shino’s argument, raised for the first time in his reply brief, that *Waters* is distinguishable. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.