

JUL 29 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NOT FOR PUBLICATION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.

HOWARD JAY BONIFANT,

Defendant - Appellant.

No. 15-30048

D.C. No. 1:11-cr-00127-SPW

MEMORANDUM*

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

Submitted July 27, 2016**

Before: PREGERSON, LEAVY, and OWENS, Circuit Judges.

Howard Jay Bonifant 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).

Bonifant contends that the district court erred in holding that it did not have the authority to reduce his sentence. We review de novo whether a defendant is eligible for a sentence reduction. *See United States v. Leniear*, 574 F.3d 668, 672 (9th Cir. 2009). Although the district court misstated Bonifant's total offense level, the court was correct that Amendment 782 did not lower Bonifant's Guidelines range. Contrary to Bonifant's argument, his total offense level after the amendment was 40. *See* U.S.S.G. § 1B1.10 cmt. n.1(A); *United States v. Ornelas*, __F.3d__ (9th Cir. 2016) (holding that the base offense level in a motion for reduction of sentence under Amendment 782 is determined without taking into account downward departures); *United States v. Pleasant*, 704 F.3d 808, 812 (9th Cir. 2013), *overruled on other grounds by United States v. Davis*, __F.3d__ (9th Cir. 2016) (en banc). Because a total offense level of 40 and a criminal history category of III yields a Guidelines range of 360 months-life, the same range that applied before Amendment 782, the district court properly held that it lacked authority to lower Bonifant's sentence. *See* 18 U.S.C. § 3582(c)(2); *Pleasant*, 704 F.3d at 810.

AFFIRMED.