

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 17 2017

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 15-30218

Plaintiff-Appellee,

D.C. No. 4:08-cr-00007-SEH

v.

MEMORANDUM*

ELAINE BESTON,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted August 9, 2017**

Before: SCHROEDER, TASHIMA, and M. SMITH, Circuit Judges.

Elaine Beston appeals from the district court's order granting in part her 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 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). Beston's request for oral argument is denied.

The district court reduced Beston's sentence from 192 to 180 months.

Beston contends that she is entitled to a further sentence reduction. The record reflects, however, that Beston was ineligible for a reduction because her sentence was not "based on a sentencing range that has subsequently been lowered by the Sentencing Commission." 18 U.S.C. § 3582(c)(2); *United States v. Rodriguez-Soriano*, 855 F.3d 1040, 1045-46 (9th Cir. 2017). Nevertheless, we will not enlarge Beston's sentence because "a defendant who appeals but faces no cross-appeal can proceed anticipating that the appellate court will not enlarge [her] sentence." *Greenlaw v. United States*, 554 U.S. 237, 252 (2008).

AFFIRMED.