

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 24 2017

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JESUS MANUEL FONTES,

Defendant-Appellant.

No. 16-30027

D.C. No. 1:11-cr-00042-EJL

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Submitted January 18, 2017**

Before: TROTT, TASHIMA, and CALLAHAN, Circuit Judges.

Jesus Manuel Fontes appeals pro se from the district court's order granting in part 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 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).

Fontes contends that the district court should have further reduced his sentence. Contrary to Fontes's view, the district court properly calculated his amended guideline range as 168 to 210 months without considering the one-level variance that the court granted at his original sentencing. *See* U.S.S.G. § 1B1.10 cmt. n.1(A); *United States v. Ornelas*, 825 F.3d 548, 552 (9th Cir. 2016). Because the district court reduced Fontes's sentence to 168-months, he is ineligible for any further sentence reduction. *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.”).

AFFIRMED.